

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM: PART 3
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PETER INZERILLA, as ADMINISTRATOR of the
ESTATE of ROSEANNE INZERILLA, and PETER
INZERILLA, INDIVIDUALLY,

PLAINTIFF,

-against- Index No. 11754-96
Trial

PHILIP MORRIS INC.,

DEFENDANT.
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Supreme Courthouse
88-11 Surphin Boulevard
Jamaica, New York 11435
February 7, 2003

B E F O R E:

THE HONORABLE CHARLES J. THOMAS,
J U S T I C E, and a jury

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Senior Court Reporters

MR. FINZ: Yes, I do.

MR. QUIGLEY: Yes, we do.

THE COURT CLERK: Thank you. You may be
seated.

THE COURT: Good morning.

MR. FINZ: You mixed up the cards.

THE COURT: I don't know if this is a good
idea. I think it's a good idea. You make new friends
that way.

First of all, I want to say thank you,
ladies and gentlemen, for your promptness in this
case. When a case is over, normally the judge will
say thank you and thank you and thank you, but I must
honestly tell you, in my experience, and 20 years on
this job, I have never seen a jury like you. You are
terrific. So please keep up the good work. Thank you
very much.

Okay. Another witness?

MR. HOWARD: Yes, your Honor. Defendant
Philip Morris calls Professor Kip Viscusi.

THE COURT: Right here, sir (indicating).

THE COURT CLERK: Please remain standing.

Raise your right hand.

W. K I P V I S C U S I, the witness herein, having been
first duly sworn, testified as follows:

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THE COURT CLERK: Please be seated.

In a loud voice, please state your name and
address for the record.

THE WITNESS: W. Kip Viscusi.

[DELETED]

THE COURT CLERK: Thank you.

MR. HOWARD: Good morning, Professor.

Good morning, ladies and gentlemen. Thank
you for your perseverance this morning.
Counsel.

DIRECT EXAMINATION

BY MR. HOWARD:

Q. Professor, I'm going to ask you to keep your
voice up because we're already using projector this morning,
and it's making a noise, so the jury can hear your answers.
So if you could project as well.

A. All right.

Q. All right. What is your profession, Professor?

A. I'm an economist.

Q. And where do you work?

A. Harvard Law School.

Q. What is an economist doing at Harvard Law School?

A. Teaching would-be lawyers about economics and
statistics.

Q. Okay. And in your career, are there particular

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areas within the field of economics that you specialized in?

A. Well, in addition to statistical analysis, my
main focus is on risk and uncertainty, hazard warnings, how
people make choices in risky situations, and the role of
Government regulation of risks.

Q. And are you going to be talking about those
issues, I believe, today with the jury?

A. Yes.

Q. Tell me about yourself. Where did you grow up?

A. Kentucky. Well, more in Trenton, New Jersey, but
in Kentucky.

Q. Okay. Could you describe your educational
background for the jury starting in college?

A. Well, I went to Harvard as an undergraduate,
majored in economics. Then got a master's in public policy,
Harvard. Master's in economics from Harvard, Ph.D. in
economics from Harvard.

Q. Only got in one school, Harvard?

A. Couldn't get anywhere else. That's why I went.

Q. Did you receive any scholastic honors at Harvard?

A. Yes.

Q. Could you identify some of those for us?

A. As an undergraduate, Phi Beta Kappa. A Phi Beta
Kappa is the greatest honor. Graduated Summa Cum Laude. One
award for best undergrad thesis, and best Ph.D. dissertation

1 on economics.

2 Q. What was your Ph.D. dissertation?

3 A. It was called Employment Hazards, and it focused
4 on job safety, how workers perceived risks of the job, did
5 they get paid extra for risky jobs, did they want to quit
6 risky jobs? So it's a competency analysis of job risks.

7 Q. Did that start your path down the career,
8 starting with issues relating to risk?

9 A. Most of what I've been doing for the past quarter
10 of a century.

11 Q. Okay. Now, I take it you're a tenure professor
12 at Harvard?

13 A. Yes.

14 Q. Before teaching at Harvard, did you teach
15 anywhere else?

16 A. I taught at Duke University and North Western
17 University, and visiting professors at the University in
18 Chicago.

19 Q. What did you teach there?

20 A. The same kinds of things, but I also taught
21 public finance issues, risk in the environment, labor
22 economics. These kinds of things as well.

23 Q. Now, at Harvard, other than teaching in the law
24 school, do you teach in any of the other schools?

25 A. Yes. I'm also a professor in the Kennedy School

1 of Government at Harvard.

2 Q. And I also noted from your CV you have what is
3 called an endowed chair. Can you explain what that is to the
4 jury?

5 A. It's an honorable title that you get, which means
6 that somebody, in this case it was the head of the
7 fund-raising committee for Harvard, donated several million
8 dollars to support my professorship.

9 Q. You don't get those several million dollars, but
10 it supports the professorship?

11 A. Throws out interest, and interest is used to pay
12 my salary and the secretary's salary, and things like that.

13 Q. Have you published in the field of economics?

14 A. Yes.

15 Q. How many books have you published in the field of
16 economics?

17 A. Twenty books.

18 Q. And how many peer-reviewed articles did you
19 publish in the field of economics?

20 A. Over two hundred articles. About two hundred are
21 peer reviewed.

22 Q. Of the 20 books and the 200 articles, what
23 percentage focused on areas we're going to be talking about,
24 risk and risk uncertainty warnings?

25 A. Most of them. At least three quarters of them.

1 Q. Actually, I got copies of some of your books
2 here. First one, Informational Approaches to Regulations, is
3 this one of your books (indicating)?

4 A. Yes.

5 Q. And what's this about?

6 A. This is a book focusing on hazard warnings for
7 chemicals and pesticides.

8 Q. Another one, Learning About Risk, what is this
9 one about (indicating)?

10 A. More about chemical pesticides, but also job
11 safety hazard warnings as well.

12 Q. And this was published by the Harvard University
13 Press?

14 A. This is Harvard Press. Last one is MIT Press.

15 Q. Okay. We'll come back to your books in a moment.

16 I want to talk now about things you do use of the
17 academic area, and outside of Harvard, do you do professional
18 consulting?

19 A. Yes.

20 Q. Have you prepared a chart of some of the
21 organizations that you consulted with?

22 A. I have.

23 Q. Let's see if I could pull it out for us.

24 MR. HOWARD: May I show this to the jury,
25 your Honor?

1 THE COURT: Yes.

2 Q. All right. So this is outside of your teaching
3 responsibilities at Harvard Law School.

4 Could you identify some of the institutions, the
5 research institutions, you've worked with in these fields?

6 A. Let me just pick a couple of them.

7 The National Bureau of Economic Research is a
8 prestigious nonprofit research organization in economics
9 located in Cambridge. And the National Science Foundation is
10 the Government agency that's responsible for funding much of
11 the scientific research in the United States.

12 Q. Okay. And it says, the National Science
13 Foundation, you reviewed all consumer product safety
14 Commission regulations and safety codes. Go into more detail
15 what you've done with that.

16 A. That project focused on the agency, the Consumer
17 Product Safety Commission, which issues regulations
18 pertaining to everything from child resistant caps to various
19 kind of requirements on cribs and other children's toys. And
20 my focus was to assess the performance of this agency and
21 whether they did, in fact, enhance safety.

22 Q. The National Bureau of Economic Research, it says
23 you did a study on the social cost of smoking for that
24 organization. Could you describe in a little more detail
25 what that study involved?

1 A. Well, in the early 1990s, there was a lot of
2 discussion in the popular press about the cost associated
3 with cigarette smoking and did cigarette smokers, on balance,
4 pay their own way. So I was asked by them, the National
5 Bureau of Economic Research, to prepare a study of what are
6 the costs of smoking to the rest of society, just the
7 financial costs. So I looked at excise taxes and the
8 implications of smoking for the extent to which smokers
9 collected Social Security benefits, nursing home-care costs,
10 and pension benefits to the extent in which smokers had
11 higher medical costs as well.

12 Q. And what conclusion did you reach?

13 A. On balance, smokers do pay their own way.

14 Q. Let me ask you, this study for the National
15 Bureau of Economic Research, was that related or funded in
16 any way by the Tobacco Industry?

17 A. No. Not only was it not funded by them, they had
18 no knowledge that I was even doing the study.

19 Q. And when you reached your conclusion, that was an
20 economic financial conclusion?

21 A. It was strictly a financial conclusion regarding
22 the costs of the rest -- to the rest of society, not whether
23 smoking was a good or bad thing for smokers.

24 Q. Did you come to any value judgement whether
25 smoking was a good or bad thing or smoking-related disease

1 was a good or bad thing?

2 A. No. I know disease is not a good thing, I'll
3 tell you that.

4 Q. Okay. Now, last one here, the American Law
5 Institute, that's a pretty prestigious organization. What
6 have you done for them?

7 A. They often do reports on various topics on the
8 law, and the report that I worked on was on accident law.
9 And I wrote the first draft of the chapter on hazard warnings
10 and the role of hazard warnings in the United States.

11 Q. Have you worked also for some Government agencies
12 in the area of risk assessment?

13 A. Yes, about a half dozen of them.

14 Q. Okay. And you prepared a chart of some of the
15 work you've done for Government agencies?

16 A. Yes.

17 Q. All right. Let's take a look at that.

18 THE COURT: Quick look. I don't want to
19 spend too much time. The man is obviously qualified
20 to testify.

21 MR. HOWARD: I understand, your Honor. I
22 just want to give the jury a sense of the work that
23 supports the opinions he's going to be giving in this
24 case.

25 THE COURT: Okay. Let's get there.

1 Q. Describe quickly for us some of the highlights of
2 the Government work you did.

3 I see, in particular, EPA comes up a lot. Let's
4 focus on that work with the EPA.

5 A. Beginning in 1983, I undertook studies in the
6 field of chemical labels and pesticides labels to try to
7 develop criteria for EPA so they could improve the warning
8 labels for these products. So we have provided guidance to
9 EPA, what they should tell people on the warning labels, what
10 the print size should be, whether the warnings should be
11 boxed, how it should be exercised, whether warnings should be
12 at the bottom of the label, top of the label, that sort of
13 thing.

14 Q. Are you currently working for the EPA today?

15 A. I am. In fact, I'm actually an employee of the
16 EPA on leave today. They're supporting my sabbatical.

17 Q. What are you doing for the EPA today? Not today,
18 you're here with us, but currently?

19 A. My main project is that I'm running a national
20 survey throughout the country on how much people clean lakes,
21 rivers and streams.

22 Q. And have you also done work for private industry
23 other than the research institutions and Government?

24 A. Yes.

25 Q. Okay.

1 MR. HOWARD: And, your Honor, may I just
2 show a quick slide of some of the private industries
3 he's work with?

4 THE COURT: Two minutes more of this, and
5 then let's get to the meat.

6 MR. HOWARD: Gotcha.

7 Q. Are these some of the companies you've worked
8 for?

9 A. Yes.

10 Q. Dupont, Exxon, Sic, Bristol-Myers, Dextrin, the
11 weight loss pill. You worked on warnings on that?

12 A. On Dextrin, I consulted on the design of hazard
13 warnings of that product in 1994 as well as recently as last
14 year.

15 Q. Very well.

16 Okay. Professor, have you also published in the
17 area of risk and risk perception as it pertains to smoking
18 and health?

19 A. Yes.

20 Q. I'd like to show the jury, if I may, a couple of
21 books.

22 National Risk Policy, does this include
23 discussion on risk and smoking and health?

24 A. About four or five chapters in the book, one of
25 which is devoted entirely to smoking.

1 Q. And Smoke-Filled Rooms, is this a book that came
2 out last year?
3 A. Came out last year. It's all smoking. The whole
4 book is about smoking.
5 Q. And the opinions you're going to give and the
6 discussion you're going to give today about risk perception,
7 the dangers of smoking, was that published in this book?
8 A. Yes, including almost every -- I think almost
9 every number I talk about today as well as the quotes I talk
10 about are all in the book.
11 Q. You can get this on amazon.com?
12 A. Under 20 dollars in case anybody is interested.
13 MR. FINZ: Are you handing them out?
14 THE COURT: Leave the book with the jury,
15 and thank you very much.
16 MR. FINZ: No cross-examination, Judge.
17 MR. HOWARD: I'd be happy to your Honor. I
18 offer it in evidence.
19 THE COURT: No.
20 MR. HOWARD: Okay.
21 Q. All right. Let me ask you, the area of risk and
22 uncertainty that you talked about that you've studied for the
23 last quarter century, what does it mean?
24 A. Well, first, what's the difference between risk
25 and uncertainty. Risk is where you know the probabilities

1 for sure. So if you buy a lottery ticket, you know there's
2 some exact chance of winning, or flip a coin, there's a 50/50
3 chance of winning.
4 Uncertainty is where it's a probability but you
5 don't know what the probability is. So yesterday they were
6 saying a 90 percent of snow today or big snowstorm, but that
7 would be an uncertain probability because nobody knows the
8 real exact chance of snow.
9 Q. Now, how do these concepts of risk and
10 uncertainty fit in with the area of health?
11 A. Well, stocks pose risk, products pose risk, so it
12 comes up in that context. Also in medical context, if you
13 have an operation, there's some probability it will turn out
14 well and some probability it may not. So that risks are
15 present in lots of health contexts.
16 Q. And do we, as consumers and people in society,
17 take risks and deal with issues of risk and uncertainty every
18 day?
19 A. Yes. Every time you get up in the morning, you
20 have to make various risky decisions whether to venture out
21 in the snowstorm, for example.
22 Q. And how about lifestyle choices? If you exercise
23 and diet, does that involve risk and uncertainty?
24 A. Yes, it does.
25 Q. In what way?

1 A. Lack of exercise imposes potential risks. But on
2 the other hand, you may decide you prefer a sedentary
3 lifestyle and don't prefer exercise. You make the judgement
4 do I really want to go jogging this morning or not?
5 Q. Or rather stay in bed?
6 A. Right.
7 Q. And -- okay. And how does the field of economics
8 play into these issues of risk and uncertainty?
9 A. Well, originally, economists worry about risks,
10 financial risks, the chance that your stock price could go up
11 or down tomorrow. But economists devote increasing attention
12 to the other kinds of risks people take that affect health,
13 not just money.
14 Q. Before we get into the opinions, I just want to
15 also go through a background about warnings.
16 At the very basic level, what is a warning?
17 A. A warning is some mechanism for providing
18 information to people about risks. It could be an -- on a
19 product warning label, but it doesn't have to be.
20 Q. Where else do people get warnings from not on
21 products?
22 A. Could be a safety training program. You could
23 hear a warning on TV. Warnings could come verbally in
24 different contexts; somebody shouts fire. It could also come
25 from Public Health officials who get warnings as part of what

1 your education's about in schools.
2 MR. HOWARD: Your Honor, before I move on to
3 the opinions, I would like to proffer Professor
4 Viscusi as an expert in the areas of hazard warnings,
5 risk communication and risk perception.
6 MR. FINZ: No objection.
7 THE COURT: Continue.
8 MR. HOWARD: Okay.
9 Q. One more thing before we get to the opinions.
10 I take it, giving your qualifications, Professor,
11 you have testified in courtrooms like this one before?
12 A. Yes, but this is a very nice courtroom.
13 Q. So you testified in courtrooms not as nice as
14 this one?
15 A. That's true.
16 Q. How many times have you testified as an expert
17 witness in courtrooms like this or not as nice?
18 A. Twenty times or so. I don't keep an exact count,
19 but in that Ball park.
20 THE COURT: This is the best, isn't it?
21 THE WITNESS: It is really a very pretty
22 courtroom.
23 Q. And in those 20 times, have you testified
24 exclusively for plaintiffs or exclusively for defendants?
25 A. No.

1 Q. It's been mixed?
2 A. Mixed. Most of my testimony has been for
3 plaintiffs.
4 Q. Can you give us an idea of expert testimony on
5 behalf of a plaintiff in cases?
6 A. Well, I've testified on personal injury damages,
7 but also on hazard warning issues for plaintiffs as well.
8 Q. Have you also testified on behalf of tobacco
9 companies for smoking and health cases?
10 A. Yes.
11 Q. And how many times?
12 A. This is my fifth time.
13 Q. Okay. And I take it you are being compensated -
14 as a matter of fact, I know you are being compensated - for
15 your time with us today, correct?
16 A. Yes.
17 Q. Now, is the fact you're being compensated as an
18 expert witness in this case or any cases you testified in
19 impacted your opinions in those cases?
20 A. No.
21 Q. All right. Let's get to your opinions. And have
22 you prepared a slide to identify for the jury what opinions
23 you're going to be talking about to this jury?
24 A. Yes, I have.
25 Q. If you take a look at your screen and confirm

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1 with me, these are your opinions in this case?
2 A. This is it.

3 MR. FINZ: Judge, I'm going to object to
4 this. Maybe he can give the opinions and then put
5 them up.

6 THE COURT: I think so, yes.

7 MR. FINZ: Instead of prompting him.

8 THE COURT: Let him look at it if he needs
9 them. Let him refresh his recollection if he needs
10 them, then you could flash it for us.

11 Q. Are these the opinions you're giving in this
12 case?

13 A. They are.

14 Q. Could you read them for the jury?

15 A. I'll paraphrase them.

16 Q. Okay. First one regarding history of warnings --

17 A. Before the --

18 MR. FINZ: Your Honor, if we could take it
19 down, he could testify and then put it up. He's
20 reading from the monitor.

21 THE COURT: We don't want you to read it.

22 I don't think he needs the monitor, do you?

23 THE WITNESS: No.

24 MR. HOWARD: Okay. You could turn it off.

25 Q. Okay. Regarding the history of warnings, what

1 opinion are you going to be giving in this case?
2 A. That in the 1950s and the 1960s and earlier,
3 consumers did not look to hazard warnings for risk
4 information about products. That was not the norm then it is
5 today.
6 Q. When you say they didn't look to hazard warnings,
7 are you talking about warnings on product packaging?
8 A. That's correct. The warnings culture that we
9 have today simply did not exist back then.
10 Q. Okay. And your second opinion relating to the
11 adequacy of people's information relating to the risks of
12 smoking in the 1950s and '60s, what is this?
13 A. That -- my opinion is that as the scientific
14 information developed during that time period, it was gotten
15 out to the public and the public was aware of that
16 information.
17 Q. And you have a third opinion relating to
18 divergent risk estimates. Can you explain what that is?
19 A. Yes, I've done studies that show that when
20 there's a debate about the risk, if the Government says the
21 risk is high and the industry says the risk is low or some
22 other kind of debate, people tend to believe the worst case
23 scenario.
24 Q. And risk perception, what is your opinion
25 relating to risk perception as it pertains to smokers and

1 their perception of risk and smoking?

2 A. I review evidence on risk perception indicating
3 substantial perception of the risk. And for the period
4 beginning in 1985, I have evidence that shows that people
5 actually over-assessed the lung cancer risks of smoking.

6 Q. And, finally, do you have an opinion relating to
7 consumer acceptance of risk? Would you describe that for the
8 jury?

9 A. That's the final opinion which is that hundreds
10 of thousands of adults choose to begin smoking every year.

11 Q. Even today with all we know about smoking?

12 A. Even today.

13 MR. HOWARD: Your Honor, may I show the
14 screen just to put it in context, the opinions as we
15 are going to hear them?

16 THE COURT: Go on.

17 MR. HOWARD: Thank you.

18 Q. All right. I want to start now, Professor, with
19 this first opinion regarding the history of warnings in the
20 1950s and 1960s. And to assist in your testimony regarding
21 that opinion, have you brought with you a very large board to
22 show the jury?

23 A. Yes.

24 Q. Okay. Let's see if I could get it out here.

25 MR. HOWARD: If I may, your Honor, may I ask

1 the Professor to come down and I'll hold the board up
2 and ask him how -- to describe what the board is
3 showing.

4 THE COURT: Yes.

5 MR. HOWARD: Thank you, your Honor.

6 You could have one of these pointer things
7 (handing).

8 THE COURT: That's kind of small.

9 Q. Now, I'll just hold it here.

10 MR. HOWARD: Can everybody see this?

11 Q. Why don't you describe generally what this board
12 is showing us.

13 A. Let me give you an overview.

14 Congress passed the law in 1965 requiring
15 warnings on cigarettes. And what I'm going to do is put that
16 in context. So --

17 Q. Why don't you come over this way (indicating) so
18 you don't give your back to the jury there. I don't mind if
19 you hide me.

20 A. The question I'm going to answer is were warnings
21 for consumer products the normal before the 1960s? If you
22 take a look at what -- Government warnings, these are all the
23 pieces of legislation and all the Government regulations
24 pertaining to warnings. I did an inventory throughout the
25 century.

1 THE COURT: Sustained.

2 Q. What is the significance, generally, what
3 consumers were expected to see when they looked at products,
4 generally, about whether those products contained warning
5 labels in the 1950s and 1960s?

6 A. Consumers did not generally look to hazard
7 warnings on products for risk information. In fact, if you
8 go to 1960, that's when we get the Hazardous Substance
9 Labeling Act for the first time. Congress specified what the
10 words caution, warning and danger meant. And what the term
11 flammability should be applied to.

12 Q. So before 1960, those trucks driving around with
13 gasoline, they were going out with no warnings, flammable,
14 anything on it?

15 A. That's correct.

16 And we take it, in the 1970s, we have a lot of
17 action, we have a lot of consumer product safe Commission
18 warning requirements for things like chemistry sets and the
19 like. So the 1970s warning took off -- it's interesting.
20 It's not on this chart, but there's a study done by
21 researchers at Cangee Melon (phonetic) in the early 1970s,
22 published in 1974, and they looked at lots of products for
23 which you expect warnings in things like power tools or where
24 you have warnings today that go along with it, and there were
25 no warnings with any of these products. So this chart does

1 Back in 1927, we have the Federal's Caustic
2 Poison Act, and that required the warnings be placed on the
3 12 most dangerous chemicals, things like hydrochloric acid,
4 sulfuric acid.

5 Q. Am I correct, before 1927, there were no warning
6 labels on anything in this country imposed by law?

7 A. Nothing.

8 In 1938, we get the first regulations for food
9 and drug and cosmetics that focused primarily on the
10 misbranding of drugs. So they had to tell people what was
11 actually in the drug as opposed to calling it something that
12 was not. So it's an accurate label.

13 Then in 1947, we started warning for
14 insecticides, fungicides and rodenticides. These are very
15 potent chemicals.

16 Then we amended that act in 1959. So before
17 1960, that's all there was.

18 Q. And what is the significance of that to you with
19 respect to your opinion on consumer expectations for product
20 warnings on product labels?

21 A. There were actually no legal requirements before
22 the 1960s.

23 MR. FINZ: I'm going to object to whether
24 there were legal requirements. That's a matter for
25 the Court.

1 represent what, in fact, was out there in terms of the
2 warnings consumer accounted.

3 Q. And then?

4 A. By the 1980s, we have a proliferation of
5 warnings, including in 1983, we have the first warnings
6 required in the workplace for dangerous chemicals in the
7 workplace, which was a regulation that I had some involvement
8 in leading to it being issued.

9 Q. I see you got one highlighted there in 1980 on
10 lawn mowers. What is the significance of that legislation?

11 A. Well, that was interesting that for the first
12 time there were requirements to tell people that a lawn mower
13 posed dangers if you put your hands or feet under the lawn
14 mower. That did not start until 1980. Before then, there
15 were no warnings associated with lawn mowers.

16 Q. Fair to say people knew not to stick their hands
17 or feet inside a lawn mower before 1980, that that would be
18 dangerous?

19 A. Yes, I think that's something that might dawn on
20 you.

21 Q. Now, what's the significance to you that in 1980
22 there's a Federal law requiring warnings being put on lawn
23 mowers?

24 MR. FINZ: I'm going to object to that,
25 Judge.

THE COURT: I'll allow it.

A. It just indicates the extent to which warnings are covering a wide range of products. You know, things for which -- including obvious hazards. Batman cape has a warning that it doesn't enable you to fly. So warnings now are ubiquitous.

Q. But that wasn't the case in the 1950s or 1960s?

A. That's true. It was not true back then.

Q. Okay. Thank you, Professor.

My arm was getting tired.

Now, have you done other research other than looking at the history of Federal legislation relating to warnings to support your opinion that in the 1950s and 1960s consumers were not looking to product labels for their health and risk and warning information?

A. Yes, I've done several other things.

Q. What else have you done?

A. I've looked at public opinion polls as to what information people had heard as well as what they believed. I've looked at statements by Public Health officials as to what information was getting out there. I've also looked at smokers' decisions in terms of the kind of cigarettes people smoked during that time period.

Q. And I want to get to that in a moment.

One thing that I wanted to talk about, though, in

addition to the legislation relating to warnings, were there articles and coverage of the issues of the warnings in the press and in scholarly publications?

A. Yes, there were.

Q. And what did you -- did your review of those show?

A. Well, before the 1970s, the warnings literature was essentially nonexistent. A comprehensive bibliography of these studies indicate, on average, about two articles per year in the '40s and '50s dealing with warnings. These generally dealt with exit signs. But in the 1970s and 1980s, there were hundreds of articles in the professional literature dealing with hazard warnings which matches the time period I had up there with my chart, which is that warnings really are a recent phenomenon since the 1970s and 1980s.

Q. Now, let's get to the issues you just mentioned, and I think this goes to the second point on your opinions about whether smokers in the 1950s and 1960s were receiving information with the dangers of smoking from other sources. And I believe you said, the first thing was, polls you talked about?

A. Yes.

Q. And what kind of polls are you referring to?

A. Well, we can't run polls now to figure out what

people were thinking back then. So the best source of information is polls run at that time, and I rely on the Gallup polls.

Q. What is Gallup? Who's Gallup?

A. Dr. George Gallup was the Dean of American Cultures, and the Gallup poll was usually the main barometer of public opinion out there.

Q. And the Gallup organization actually conducted polls about what people were thinking about smoking and health back in the 1950s?

A. Yes, they did.

Q. Okay. Does the fact that they were conducting these polls, that very fact alone, have any significance to you about information coming out relating to issues of smoking and health?

A. Well, smoking issues was front page news. I was around in the 1950s. And they -- the Gallup organization often runs polls on issues of major public interest.

Q. And have you prepared a chart of some of the poll results that you've looked at?

A. Yes.

MR. HOWARD: Let's show these to the Court and counsel if we can, please.

Q. Is this a chart that you prepared?

A. Yes.

MR. HOWARD: Your Honor, I ask to show this to the jury.

MR. FINZ: Before we do that, I don't know if this is actually from a poll.

THE COURT: Do you have the original?

MR. HOWARD: I have the original polls right here, your Honor. I offer them in evidence. Just using this as a demonstrative. I'm happy to show them to Mr. -- Counsel.

THE COURT: Show Mr. Finz the poll.

MR. HOWARD: Mr. Finz, this is the first poll (handing).

MR. FINZ: This is --

MR. HOWARD: For the first one.

This is the second one (indicating).

MR. FINZ: Is this my copy?

MR. HOWARD: Yes.

MR. FINZ: Okay.

Okay. The second one?

MR. HOWARD: The second one is right here (handing).

MR. FINZ: And the third one?

MR. HOWARD: Right (indicating). That one (handing).

MR. FINZ: Is that my copy?

MR. HOWARD: Yes.

Actually, that's my copy. I'll give you a clean one (handing).

MR. FINZ: Which box is it?

MR. HOWARD: This one right here (indicating).

MR. FINZ: No objection, Judge.

THE COURT: Okay. Continue on.

MR. HOWARD: Thank you, your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. HOWARD:

Q. Okay. The first poll in 1954, what was the question that was asked of the survey respondents by Gallup?

A. Well, the exact question was, "Have you heard or read anything recently to the effect that cigarette smoking may be a cause of cancer of the lung?"

Q. So Gallup was asking, in 1954, people's awareness about cancer and the link between smoking and lung cancer?

A. Yes.

Q. And can you describe for the jury the significance of the figure as high as 90 percent in a survey responses?

A. Well, it's extremely hard to get a hundred percent for any survey. In fact, if you take an example, during the Clinton administration, they asked people who was

the vice president of the United States, and only 70 percent of the people could name Al Gore as the vice president.

Q. So would it be fair to say that 90 percent hearing, in 1954, a link between smoking and lung cancer is a significantly large figure?

A. It's a very high figure.

Q. Okay. Let's take a look at the next poll in 1954 done by Gallup that asks, "Do you think cigarette smoking is harmful or not?"

MR. FINZ: Your Honor -- well, I'll leave it for cross. No objection.

Q. That was another poll conducted?

A. Yes.

Q. And 70 percent thought that cigarette smoking was harmful in 1954?

A. Yes. That's correct.

Q. And what is the significance of that to you with respect to your opinions relating to people's awareness of the dangers of smoking in the 1950s?

A. People not only had received the information, but 70 percent of the people believe that there were some risks associated with smoking.

Q. Is there a distinction between awareness polls and belief polls?

A. Yes.

Q. Okay. Is it fair to say the first is an awareness poll and second one is a belief poll?

A. That's correct.

Q. In your experience, trying to assess risk perception and the need for warnings and things like that, what's more significant to you? Is it the awareness polls or the belief polls?

A. Well, I've focused primarily on awareness in terms of what information people have received. So if we're asking is there an informational shortfall, you should focus on awareness.

Q. And the awareness figures in 1954 were 90 percent?

A. That's correct.

Q. The third poll here is in 1957. Gallup asks, "Did you happen to hear or read about the recent report of The American Cancer Society regarding the results of a study on the effects of cigarette smoking?"

What's the significance of this poll, Professor?

A. We have 77 percent of the public had heard about a specific study. In fact, Dr. George Gallup himself wrote a sounding figure in polling animals or words to that effect.

Q. And that study demonstrated a link between smoking and lung cancer?

A. Yes.

Q. Have you prepared another chart of two additional polls, one from the 1950s and one from the 1960s, on the issue of smoking and cancer?

A. I have.

Q. Let's show this to the Court and counsel, please.

MR. HOWARD: Stuart, I have these for you as well.

I'll note this is the same as the American Cancer Society. It's a second copy because the question (handing) --

MR. FINZ: Which question do you mean?

MR. HOWARD: This one is right here

(indicating). Right here (indicating).

That's it. And then --

MR. FINZ: What page is that on?

MR. HOWARD: The first one. The bottom one.

I'll give you this one. This is the 1960 (handing).

May I display it to the jury, your Honor?

MR. FINZ: No objection.

THE COURT: Yes.

Q. Okay. What was Gallup polling in 1957, Professor?

A. Gallup asked people what is your opinion, do you think cigarette smoking is one of the causes of lung cancer.

1 Q. So this is a belief poll; is that correct?
 2 A. Yes.
 3 Q. Fifty percent responded, yes? Is that right?
 4 A. That's correct.
 5 Q. And another 26 responded undecided?
 6 A. That's how Gallup classified them, yes.
 7 Q. And what -- how do you interpret the survey data
 8 with respect to the class of respondents who were undecided
 9 on the issue?

10 MR. FINZ: I'm going to object to that.

11 Judge.

12 THE COURT: Rephrase that question, please.

13 MR. HOWARD: Sure.

14 Q. What significance do you place on the group
 15 called undecided?

16 A. Well, this survey matches up with the previous
 17 survey we had on the American Cancer Society. The questions
 18 were asked of the same survey. We had three quarters of the
 19 respondents, roughly, had heard of the study linking smoking
 20 to lung cancer, so they had gotten the information.

21 The way I interpret is 50 percent said, yes,
 22 there is a linkage. 26 percent of the people heard it, but
 23 still on the fences as to whether they personally believed it
 24 caused lung cancer.

25 Q. Again, as far as the significance of the

1 information being made available to the public, do you, you,
 2 yourself, link the 26 with the 50 or put it in the camp of,
 3 no, they hadn't heard it?

4 A. I would link with the 50. Also ties in with the
 5 previous question.

6 MR. FINZ: Going to object. Document speaks
 7 for itself.

8 THE COURT: Sustained.

9 Q. All right. 1969, Professor. Similar question
 10 asked by Gallup, correct?

11 A. Yes.

12 Q. What is your opinion, "Do you think cigarette
 13 smoking is one of the causes of cancer of the lung?" And
 14 what were the results in this poll?

15 A. In '69, 71 percent said yes. Another 18 percent
 16 have no opinion.

17 Q. What is happening in the 12 years between the
 18 Gallup polls?

19 A. We've had an increase in the extent to which the
 20 public believed there's a link between smoking and lung
 21 cancer.

22 Q. Now, the polls we've looked at, Professor, deal
 23 with smoking and effects on health and smoking and lung
 24 cancer. Was Gallup doing any polls in the 1950s or 1960s
 25 that you have seen relating to the issue of whether smoking

1 is hard to quit or can be considered addictive?

2 A. No.

3 Q. Have you seen public information available to
 4 consumers about the fact that smoking could be hard to quit
 5 or considered addictive?

6 A. Articles that I've read about the history of
 7 smoking such as the one in Smithsonian Magazine referring to
 8 the long history which people have known that cigarette
 9 smoking is hard to quit dating back to Mark Twain and
 10 probably earlier.

11 Q. And if I were to represent to you, ask you to
 12 assume that Dr. Grunberg, an expert called by plaintiff in
 13 this case, testified that there has been common knowledge
 14 among the public since the 1950s that cigarette smoking could
 15 be hard to quit, would you agree with that?

16 A. Yes.

17 Q. Now --

18 MR. FINZ: I'm going to object to that. I
 19 don't believe that was the testimony, but, once again,
 20 the jury will make that determination.

21 THE COURT: All right.

22 Q. Now, Professor, other than polls --

23 MR. HOWARD: And we could put this down.

24 Thank you.

25 Q. You mentioned, I think, before the second support

1 of your opinions were statements by Government and Public
 2 Health officials; is that correct?

3 A. Yes.

4 Q. All right. Could you give some examples for our
 5 jury of some Government health officials and Public Health
 6 officials who are making statements concerning the extent to
 7 which the public had been warned about the dangers of
 8 smoking, say, back in the 1950s?

9 A. Well, we have Dr. Cuyler Hammond on the See It
 10 Now Edward R. Murrow Show.

11 Q. I think we have that in evidence. I'll actually
 12 show that to the jury, if we can.

13 This is Defendant's Exhibit H (indicating).
 14 This is on TV, the See It Now Show?

15 A. That's correct.

16 Q. That's Dr. Hammond?

17 A. Yes.

18 Q. The jury has heard about him. He's from Hammond
 19 & Horn?

20 A. Yes.

21 Q. The studies?

22 A. Yes.

23 Q. The epidemiological studies?

24 A. Yes.

25 MR. FINZ: Do you have the number?

MR. HOWARD: Yes, H. It's a transcript of

See it Now.

Q. And what does he say?

A. "In my opinion, people should be warned of the danger, and they are being warned. What they then want to do, whether they wish to smoke or not, is their own business."

Q. Let me ask you, from the perspective of an economist, what's -- what significance do you place in that statement?

A. Much of economics focuses on rational choice, and from an economic standpoint, we want people to have accurate risk information and be knowledgeable of the risks when they're making their decisions, and then to do the risk cost and balancing when they make such judgments. And what Dr. Hammond is saying is that people do have the information back then.

Q. And then the choice is up to them, right?

A. That's correct.

Q. And from an economics -- economist's point of view, is that an acceptable statement to you?

A. That's the way we want the market to work, people making informed choices and then make the choices that they want, given their own preferences.

Q. All right. Other than Dr. Hammond --

MR. HOWARD: You could put that down.

Q. -- the Surgeon General in 1957, do you remember who he was?

A. Dr. Leroy Burney.

Q. And Dr. Leroy Burney was involved on the subject of whether the public was being adequately warned about the dangers of smoking?

A. Yes, he indicated that the information about the risks of smoking had been widely disseminated by the media, that the Surgeon General's office had contacted the American Medical Association and that this information was being disseminated by the physicians to their patients as well.

Q. And how about the director of the National Cancer Institute, John Heller? What did he have to say on the issue?

A. That was also in 1957. He also said that the information was being widely publicized.

MR. FINZ: I'm going to object, your Honor.

These are -- I'm not sure that it's appropriate for Dr. Viscusi to be repeating what other people may have said. That's hearsay.

THE COURT: You're right.

Is this anything coming directly out of something that's put in evidence?

MR. HOWARD: Your Honor, I'm not offering it

into evidence. It is hearsay. The Professor is relying on it for his opinions. We'd had professors rely on articles and evidence and medical data. No difference.

THE COURT: But we don't go chapter and verse into what the opinion is. He can tell us what he relied on, but how we're getting it, it's the suggestion of giving it improperly, the picture somehow coming in as primary evidence, and we don't want that to happen.

CONTINUED DIRECT EXAMINATION

BY MR. HOWARD:

Q. Professor, I'd ask you not to quote these people, but I want the jury to get a sense of the content of what they were saying as it supports your opinions about the public being adequately warned. And I take it these statements by Public Health officials that were there at the time and involved is something you relied upon in giving your opinions?

A. It's another source of information we have about that time period since we can't go back in time.

Q. Okay. Now, you mentioned, with respect to Dr. Burney's information going to the medical -- American Medical Association, without quoting, can you give the jury an idea of what the American Medical Association was saying

in 1964 about the need for warnings?

MR. FINZ: Same objection.

THE COURT: We're back to the same situation.

You want to have him testify as to what went on in the '50s, '60s. He can give his opinion based on A, B, C, D, E, F, G, but I don't want you to give those opinions at the same time that you're telling me what he's basing his opinion on.

MR. HOWARD: Okay.

Q. Professor, what is your opinion about the need -- well, whether the consumers in the 1950s and '60s were getting information about the health risks of smoking?

A. All the leading Public Health officials and cancer researchers whose statements I've examined indicate that the information was being given to the public and that the public believed it.

Q. And these were statements in the 1950s and 1960s, correct?

A. Yes.

Q. Now, in addition to these statements and in addition to the polls, what was the third thing that you've relied upon for your opinion?

A. I also looked at the kind of cigarettes people smoked to see if they were switching the kind of cigarettes

1 they smoked as word about the health effects spread.

2 Q. And what were they doing?

3 A. People did two things. They switched to filtered
4 cigarettes and also switched to low tar cigarettes in a way
5 to cut down the risk.

6 Q. And what was the significance of that to you with
7 respect to your opinions?

8 A. It's suggests that people were voting with their
9 feet. Once they have gotten the information that smoking is
10 risky, they're seeking ways that they think will reduce the
11 risk to themselves.

12 Q. Let me show for the Court and counsel a chart.

13 I believe this chart comes from one of your
14 books, does it not?

15 A. It does.

16 Q. US Per Capita Tar Adjusted Cigarette Consumption.

17 MR. HOWARD: I would ask to show this to the
18 jury.

19 MR. FINZ: I'm going to object.

20 THE COURT: Tell us how he made the chart.

21 Q. How did you make the chart, Professor?

22 A. Okay. The first component, Per Capita Cigarette
23 Consumption. So it's the average number of cigarettes smoked
24 or bought per adult in the United States by year.

25 THE COURT: How did you figure that one out?

1 THE WITNESS: That's data published by the
2 Tobacco Institute. They inventory the data throughout
3 the century.

4 Q. Okay. And then what did you do?

5 A. I had weighted it by the tar levels. So if a
6 consumer smoked one pack of cigarettes and now switched to a
7 pack of cigarettes that posed half as much tar, I would say
8 that counts as half a pack of cigarettes, and I got the tar
9 levels from the US Department of Agriculture.

10 MR. HOWARD: And, your Honor, may I show the
11 chart to the jury?

12 THE COURT: Is that the only thing you used?

13 THE WITNESS: That's it.

14 THE COURT: Tar levels, which you got from
15 the US Department of Agriculture, and smoking
16 statistics, which you got from what? The American
17 Tobacco Institute?

18 THE WITNESS: The Tobacco Institute, yes,
19 your Honor.

20 THE COURT: All right.

21 Any objection, Mr. Finz?

22 MR. FINZ: Yes, Judge.

23 THE COURT: I'll allow it.

24 Q. And what does the chart indicate that's going on
25 in the 1950s and 1960s with respect to Per Capita Tar

1 Adjusted Cigarette Consumption?

2 A. The movement to low tar cigarettes is not new.
3 People have been cutting back on the average tar levels of
4 their cigarettes for the past half century.

5 Q. Now, in 1966, when the first warnings went on the
6 packs of cigarettes, did that have any significant impact on
7 tar adjusted consumption?

8 A. No. What you'd want to know, if it had an
9 effect, we'd have a continuous downward slope throughout. So
10 if the warnings had an effect, it should -- should have a big
11 jump, downward jump, in Per Capita Tar Adjusted Cigarette
12 Consumption, but you don't notice a precipitous jump in 1966.

13 Q. What does that tell you?

14 A. That warnings did not provide new information to
15 people. The information was already out there.

16 Q. And you also prepared a chart with respect to
17 what was happening in terms of filter cigarette sales?

18 A. Yes, I have.

19 MR. HOWARD: Show this to Court and counsel,
20 please.

21 Q. And how did you prepare this chart?

22 A. These data reported in the -- by the Surgeon
23 General and by the Federal Trade Commission. It's
24 information.

25 Q. And this is actually from the US Surgeon

1 General's Report, 1989, which I believe is in evidence as
2 Plaintiff's Exhibit 66?

3 MR. FINZ: Your Honor, if he's going to use
4 these slide shows, I'd ask for a copy so I have
5 something to cross-examine him on.

6 THE COURT: Are there hard copies of this?

7 MR. HOWARD: Yes. I could give you hard
8 copies, Stuart. Absolutely.

9 MR. FINZ: They flash on and off.

10 THE COURT: The point is well taken.

11 MR. HOWARD: I will give you a complete set.

12 MR. FINZ: Okay. Tomorrow?

13 MR. HOWARD: That's good.

14 I'll give them to you right now, each one
15 we've used (handing).

16 I'll first give you these two (indicating).

17 Here you go (handing). And here are the --

18 (Pause in the proceedings.)

19 MR. HOWARD: Okay. Can we show this to the
20 jury.

21 THE COURT: Yes.

22 MR. HOWARD: Thank you, your Honor.

23 Q. Domestic market share of filter cigarettes as a
24 proportion of total cigarettes sold United States 1950 to
25 1986 from the Surgeon General's report, Plaintiff's Exhibit

66 in evidence, Doctor, what is this telling us?

Professor. Everyone else has been a doctor.

You're our first Professor.

Go ahead.

A. As you could see from the chart, filtered cigarettes didn't have any market share in the early 1950s. Then they took off by 1955, 19 percent of the cigarettes sold were filtered cigarettes. And by 1960, over half of all cigarettes sold.

MR. HOWARD: Can everyone see the numbers here or should I read them off?

THE JURY: It's okay.

Q. By 1966 you have 94 percent. So filtered cigarettes have taken over the market.

Now -- and what is the significance to you of the growth of the filter sales from 1 percent in 1952 to 51 percent in 1960, for example?

A. People increasingly smoked filtered cigarettes rather than unfiltered cigarettes because of the increased concern about the health risks of cigarettes.

Q. And what happened in 1966 when the warnings were produced on packs of cigarettes? Did that have any significant effect on the trend in filtered cigarette sales?

A. No, the jump from '65 to '66 is not much different than the increase from '64 to '65, you know, or '63

to '64. So there's no significant jump.

Q. We've heard an expression in this case called Actions Speak Louder Than Words. How would you apply that phrase, if you do, to -- what's the significance of what we're seeing here?

A. Well, as I indicated before, what's happening is people are voting with their feet. They've gotten the information that smoking is risky. Filtered cigarettes are perceived as a way to reduce the risks. That's why they're switching to filtered cigarettes.

Q. Now, there's been evidence in this case that in the year 1999 Philip Morris posted a website stating the Public Health consensus that cigarette smoking causes lung cancer, and then in the year 2000 stated Philip Morris's agreement with that consensus.

Did that have any impact on cigarette sales in this country?

A. There's no evidence that these statements had any effect, and the reason, from a warning standpoint, is this is not news that cigarettes are dangerous.

Q. Okay. Professor, I want to go back to this slide of your opinions.

Let's move now to the third opinion concerning divergent risk estimates. And you mentioned for us earlier that you've done some research in this area. What kind of

research have you done on this issue?

A. This is research done for the US Environmental Protection Agency because they frequently encounter situations where there's a debate among scientists as to whether the risk is high or low. And they wanted to know, well, what happens? How does the public make sense of these debates?

Q. Have you published your research on this issue?

A. I have.

Q. I've got an article entitled Alarmist Decisions with Divergent Risk Information published in the American Journal in November, 1997.

Is that this article (indicating)?

A. Yes.

Q. And what conclusions did you reach? And, actually, you've got a chart to show your conclusions?

A. I believe so, yes.

MR. FINZ: Could we have it?

MR. HOWARD: I will show it to you first.

MR. FINZ: May we have the Professor say what they are before he reads them?

MR. HOWARD: Okay.

Q. What conclusions did you learn from your research?

A. The nature of the research is that we had a

survey on hundreds of individuals, adults, and we had situations where the Government said the risk was high and the industry said the risk was low or the industry said the risk is high and the Government said the risk is low or we had two Government scientists arguing about the risk or two industry scientists arguing. And what we found is that in situations where you have different parties, the Government and the industry, so a scientist from the Government and a scientist from the industry, when they disagree, people believe whoever says the risk is the worst. So they gravitate toward the worst case scenario where, if we had two Government scientists or two industry scientists disagreeing, people would gravitate toward the high risk person to the same extent. So people believe the worse when there's a risk debate.

Q. And if I could just show this, in your words --

MR. HOWARD: May I show this to the jury?

MR. FINZ: I thought those were his words. Objection, Judge.

THE COURT: I'll allow it.

Q. Let me ask you, Professor. If there's evidence in this case that, let's take the 1950s up until 1964 when this first Surgeon General report came about, that there were scientists stating that the statistical evidence linking smoking to disease like lung cancer demonstrated that smoking

1 caused lung cancer, and let me also say that the evidence in
2 this case is that there were other scientists that were
3 saying that the statistical evidence did not prove causation
4 of lung cancer, and that there were statements from the
5 Tobacco Industry in the 1950s saying that the statistical
6 evidence was not sufficient to prove lung cancer, how does
7 your research and your conclusions about diversion of risk
8 statements impact something that like? What would have been
9 going on in consumers' perceptions of risks from hearing
10 those statements at the time?

11 A. That situation parallels my studies for EPA. And
12 what we found is that people who believe the high-risk
13 estimate in this case, it would be the Government or
14 scientist saying the risk is high. In fact, the tobacco
15 case, if anything, is not -- there's not as much disagreement
16 because in my study the industry said the risk was low
17 wherein, the tobacco case, they're saying it hasn't been
18 proven. So I would expect people to be even more likely to
19 gravitate toward the high-risk outcome.

20 Q. And are those opinions supported, again, by the
21 polls that we saw and the public statements and the trends
22 with respect to cigarette sales in the market?

23 A. Yes, these opinions are consistent with the
24 public opinion and the poll data.

25 Q. Okay. I want to turn now to the issue of risk

1 perception, and your fourth opinion that smokers and
2 nonsmokers overestimate the risks of smoking.

3 First of all, how do you go about reaching an
4 opinion like this?

5 A. Well, to figure out whether people's beliefs are
6 high enough, you need to have survey evidence on what people
7 believe the risks of smoking are and then compare that to
8 what the actual risks are to see whether their opinions
9 indicate a high enough risk belief or not.

10 Q. And how do you go about, first, measuring actual
11 risks, say, generally?

12 A. Well, we need quantitative information. And in
13 the case of the lung cancer risks of smoking, the Surgeon
14 General and the National Cancer Institute have published
15 estimates of the number of people who get lung cancer and die
16 from lung cancer due to cigarette smoking.

17 Q. What are their estimates of the actual risk of
18 getting lung cancer and dying from lung cancer from smoking?

19 A. Well, if we take the actual number of people that
20 they say die from lung cancer and divide it by the number of
21 smokers, then we could figure out what's your chance of
22 getting lung cancer if you smoke. And it works out to 6 to
23 13 percent. So roughly ten out of a hundred smokers will die
24 from lung cancer because they smoke.

25 Q. Okay. And how do you go about measuring

1 perceived risk?

2 A. To measure a perceived risk, you have to know
3 what people themselves think. And only way you could get a
4 handle on that is to ask people survey questions that
5 determine what their risk perceptions are.

6 Q. Now, have you done this in the course of your
7 career being -- doing it for purposes of smoking and health?

8 A. Yes, I've been running surveys like this since
9 1980.

10 '81. 1981.

11 Q. All right. And now, let's start with the end and
12 work backwards.

13 Did you prepare a slide to show several studies
14 that you've done comparing people's perceived risks of
15 getting lung cancer and dying from lung cancer from smoking
16 to the actual risk?

17 A. Yes.

18 MR. HOWARD: Let me show this to Court and
19 counsel.

20 Q. And is this the slide you've prepared?

21 A. That's correct. That's it.

22 MR. HOWARD: Your Honor, I ask to show this
23 to the jury.

24 MR. FINZ: One second.

25 (Pause in the proceedings.)

1 MR. FINZ: I'm going to object to this,
2 Judge. The number of these polls, apparently, were
3 taken after Roseanne passed away.

4 MR. HOWARD: Your Honor, if that's the
5 litany for what's relevant information in this
6 courtroom, I would love to strike a lot of what's come
7 in during plaintiff's case.

8 MR. FINZ: That's one of my reasons because
9 if they're polling public awareness, it's been our
10 position, of course, public awareness has increased
11 over the years. Back in the '50s it was very low.
12 The '60s a little more, '70s, '80s, today.

13 MR. QUIGLEY: Thank you for testifying.

14 THE COURT: Mr. Quigley, please.

15 Go on.

16 MR. FINZ: And with that in mind, I see that
17 there are two sources here, one of which is February
18 1997, and Roseanne passed away in 1994. Another one
19 in 1998. And if that's addressing public awareness, I
20 would submit, your Honor, that public awareness
21 certainly would have changed between '94 and '97 and
22 between '97 and '98, and would continue to change as
23 more information gets out to the public.

24 THE COURT: I think you're absolutely
25 correct, Mr. Finz. Except I believe that's something

1 which you could certainly argue to the jury as with
2 regard to the weight of his testimony. So I will
3 allow it.

4 MR. FINZ: Okay. Thank you, Judge.

5 Do you have a copy of this?

6 MR. HOWARD: Here you go (handing)

7 CONTINUED DIRECT EXAMINATION

8 BY MR. HOWARD:

9 Q. Professor Viscusi, what's going on with this
10 slide?

11 A. This slide reports on a series of polls that asks
12 questions of the general form, out of one hundred smokers,
13 how many of them think they could get lung cancer because
14 they smoke. These are people's responses.

15 Q. Okay. How many separate polls are involved here?

16 A. There are four different polls.

17 Q. Now, the actual figures, the 6 to 13 percent,
18 that's just one figure constant, correct?

19 A. Constant figure, available scientific evidence
20 from the Surgeon General and the National Cancer Institute on
21 the risks of smoking.

22 Q. Okay. And could you describe the different time
23 periods - I'm not sure the jury can see the years. I don't
24 think I can even see them - of the four different surveys
25 relating to perceived risk?

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Dr. Viscusi - Direct - Defendant

1 Q. Now, were you working on behalf of tobacco
2 companies at that time?

3 A. I was consulting with them on risk perception
4 issues.

5 Q. Now, did you then go and do your own gallop
6 survey?

7 A. Yes, one thing you do with the survey, you can
8 look at the questions they ask, you can look at the data, but
9 what I wanted to see if I ask the questions differently,
10 would I get similar answers.

11 Q. Let me stop you there. In designing surveys, how
12 important is it the way you ask a question?

13 A. It depends on the question. Sometimes if the
14 question is asked in a particular way, it could distort the
15 responses. Ideally, what you like to see is would monitored
16 changes in the wording or the structure of the question
17 drastically alter the responses. Similarly, you want to see
18 if I ask these same questions to a different group of people
19 will I get the same kind of answers.

20 Q. You, in your career, have studied how best to
21 rephrase questions in surveys?

22 A. Yes, I have been writing surveys for ASOPIA since
23 1983.

24 Q. Did you then design the survey that was conducted
25 in 1991?

Viscusi - Defendant - Direct/Howard

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1 A. 1985 is the first time period, then '91, '97 and
2 '98.

3 Q. Now, who did the survey in 1985?

4 A. It was run by a New York survey research called
5 Audits & Surveys at the requests of law firms representing
6 the Tobacco Industry.

7 Q. You were not involved in doing that survey, were
8 you?

9 A. No.

10 Q. How did you go about getting the data to include
11 it in your analysis?

12 A. It was around 1987 I came across the report that
13 they had done on this survey, and I asked the law firm if
14 they could have the survey firm send me the raw data so that
15 I could analyze it myself.

16 (Whereupon, the following was transcribed
17 by Official Court Reporter Laura Eriksen:)

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1 A. Yes.

2 Q. Was that funded in any way by the tobacco
3 industry?

4 A. I received no financial support from them, no.
5 They had no knowledge that I was even undertaking the survey.

6 Q. Did you end up publishing that survey?

7 A. It is in my smoking book pushed by Oxford Press.

8 Q. What about the 1997 and 1998 survey?

9 A. The '97 survey was undertaken in the same cases
10 against the tobacco industry.

11 Q. Did you do that survey?

12 A. No, that was run also by audits and survey.

13 Q. How about the 1998 survey?

14 A. The 1998 survey I directed that survey, and it
15 was run by Roper Starch, another survey firm.

16 Q. What are all of these surveys on perceived risk
17 versus actual risk show us?

18 A. All of them show the same consistent result,
19 which is that people think the risk of lung cancer from
20 cigarettes is about 40 percent, the true risk based on
21 scientific estimates is about ten percent, so people over
22 estimate the risk.

23 Q. Now, the 40 percent, precisely what question and
24 what answer are they giving in these surveys?

25 A. It depends on the survey, 1985 and 1997, the

1 question was out of 100 smokers, how many of them do you
2 think will get lung cancer because they smoke, the '91 and
3 '98 surveys are out of 100 smokers, how many do you think
4 will die from lung cancer because they smoke, and the wording
5 doesn't make a lot of difference.

6 Q. When we see the percentages 43, 38, 47 and 48,
7 the respondents, on average, were saying 48 people out of 100
8 was their perceived estimate of the number of people who
9 would get lung cancer or die from lung cancer from smoking?

10 A. That is correct.

11 Q. And that's a four-fold increase from the actual
12 risk?

13 A. Four times as great as the actual risk estimates
14 by the government.

15 Q. Now, did any of these surveys also break it down
16 to show how younger people, teenagers and young adults
17 perceive the risks of smoking?

18 A. Yes, the 1985 survey --

19 MR. FINZ: Your Honor.

20 A. -- dealt with 16 year olds.

21 MR. FINZ: Objection, unless we have the
22 data in the surveys.

23 THE COURT: Sustained.

24 Q. Well, your Honor, I ask, he has reviewed the
25 data, I mean --

1 THE COURT: Is that the most recent data?

2 THE WITNESS: 1999.

3 Q. He is going to correct me, 1999?

4 A. Yes, 1999.

5 MR. FINZ: I still object, if we are talking
6 about 1999 data.

7 THE COURT: Is that, is that the only data
8 you have, do you have earlier years as well --

9 MR. HOWARD: Well, your Honor, the point I
10 only have the most recent data to demonstrate in
11 today's informational environment the number of adults
12 who choose to begin to smoke in this country.

13 THE COURT: How does that relate to
14 Roseanne?

15 MR. HOWARD: It relates to the issue that we
16 have been discussing about people accepting risk and
17 making their own choices, and we think that is the
18 theme in this case.

19 THE COURT: We are in a different era
20 though.

21 I will allow it.

22 Q. What 1999 data did you review, professor?

23 A. There was a National Drug Abuse survey run by the
24 government.

25 Q. What is the figure that shows for 1999 of the

1 THE COURT: We got this far without the
2 data. If I hear an objection that is a valid one, we
3 have to go into it.

4 Q. Have you looked into the issue whether young
5 people, people 16 to 20, over perceive the risks of smoking?

6 A. Yes, the 16 to 21 year old age group.

7 Q. How do they perceive the risk of smoking versus
8 the actual risks?

9 A. I have published articles and books on this, and
10 what I found is that their risk perceptions are higher than
11 those of people in other age groups, they are 49 percent,
12 close to 50 percent.

13 Q. So they say, 50 out of 100 people will die from
14 cancer from smoking cigarettes?

15 A. That is correct, the risk levels are higher than
16 adults age 22 and above.

17 Q. Let's turn, Professor Viscusi, to your last
18 thing, consumer acceptance of risk, adults continue to smoke.

19 I think you told us about the statistics, how
20 many adults, people 18 years of age and older, begin to smoke
21 in this country, say the years in this century, the year
22 2000?

23 A. The most recent data we have is around --

24 MR. FINZ: I'm going to object to the year
25 2000.

1 number of adults 18 years of age and older who begin to
2 smoke?

3 A. 850,000 adults choose to begin to smoke now, and
4 this is in the current informational environment.

5 MR. HOWARD: Professor, thank you very much,
6 I have no further questions.

7 THE WITNESS: Thank you, Mr. Howard.

8 THE COURT: We will take a short recess
9 before we start the cross. This is not the moment for
10 deliberation, ladies and gentleman. Please do not
11 discuss this case among yourself or anyone else. We
12 will take a five-minute recess and follow the
13 instructions of the Court Officer.

14 (Whereupon, a short break was taken.)

15 THE CLERK: Please take seats and come to
16 order.

17 MR. HOWARD: We got in touch with the
18 doctor.

19 THE COURT: I heard, it's very good.

20 MR. HOWARD: We aim to please, I apologize
21 for the miscommunication.

22 THE COURT: You have been very forthright
23 and very diligent. The way I look at it, we might as
24 well do it, because who knows what's going to happen.
25 This could have been a blizzard, then we would have

1 been in trouble. Bring them in.

2 COURT OFFICER: All rise, jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE CLERK: The 12 sworn jurors are present.

5 Counsel, do you waive the reading of the roll?

6 MR. FINZ: Yes, we do.

7 MR. QUIGLEY: Yes we do.

8 THE COURT: Okay, Mr. Finz.

9 MR. FINZ: Thank you. Judge, good afternoon

10 Judge, counsel, Professor Viscusi, good afternoon,

11 ladies and gentlemen, good afternoon.

12 CROSS-EXAMINATION BY

13 MR. FINE:

14 Q. You are an economist?

15 A. Yes.

16 Q. From Harvard?

17 A. Yes.

18 Q. And you have never studied public health at all?

19 A. Public health is much of what I do, it is part of
20 labor economics and health economics which I teach.

21 Q. Are you concerned about the public's health, is
22 that one of your principal concerns?

23 A. It a factor in what I do, yes.

24 Q. Is it one of your principal's concerns, public
25 health?

1 A. Yes.

2 Q. The person inside could be burned to death?

3 A. Yes.

4 Q. And that's not good for public health, certainly?

5 A. No.

6 Q. Did you do an analysis, a risk analysis which
7 concluded that it would cost more money to fix the car than
8 the amount Ford would have to pay out for people who got
9 burnt up in the car, and, therefore, it may not have made
10 great sense at a particular time for Ford to fix the car; did
11 you do something along those lines?

12 A. I did, but the opposite conclusion.

13 Q. You said they should fix the car?

14 A. Yes, Ford did an analysis showing they did not,
15 should not fix the car. I did an analysis they should fix
16 the car.

17 Q. All right.

18 Now have you done any analysis with regard to
19 other products, for example, Chrysler Minivan?

20 A. No.

21 Q. How about a particular latch on a Chrysler
22 vehicle; were you ever involved with that?

23 A. No, I cited the court case in an article, but I
24 was never involved with it.

25 Q. Did you do any type of risk analysis on that?

1 A. Yes.

2 Q. Good.

3 Now, when you study economics, and you have done
4 a lot of risk analysis, as a matter of fact, I think counsel
5 had asked you about some risk analysis that you have done;
6 right?

7 A. Yes.

8 Q. And you have done risk analysis for a number of
9 large corporations; right?

10 A. Yes.

11 Q. And before we get to cigarette smoking, one of
12 the companies that you did risk analysis for, I believe, is
13 Ford Motor Company?

14 A. No.

15 Q. Did you ever write any article with regard to the
16 Pinto?

17 A. Yes, but that was not funded by the Ford Motor
18 Company.

19 Q. In that particular situation, the Pinto for those
20 of us, and I guess most of us remember it, had a problem with
21 the gas tank; right?

22 A. It had a problem with the gas tank, it was in the
23 back of the car, if you hit it, the car would catch on fire
24 and --

25 Q. And explode?

1 A. No.

2 Q. Well, have you ever consulted with any company
3 where the issue was submitted we make it safer and what's the
4 cost of making it safer versus how much would the company
5 have to pay out in liability judgments or people who may have
6 gotten hurt or killed?

7 MR. HOWARD: I'm going to object at this
8 point, your Honor, I don't know where we are going,
9 there is no relevance.

10 A. No.

11 Q. Never?

12 A. Never.

13 Q. Now, with regard to cigarette smoking, you've
14 done a risk analysis on that though; right, risk analysis?

15 A. No, I have taken the government risk analysis, so
16 I did not second guess the government.

17 Q. I am sorry.

18 A. I did not second guess the government's risk
19 analysis, I took their risk analysis.

20 Q. If it was already done, why were you involved
21 with it?

22 A. I used it for my economic analysis, I didn't do a
23 risk analysis, I took the government numbers.

24 Q. So you took their analysis, what role did you
25 play in that, if at all?

1 A. I never said I did.
 2 Q. Well, did you have anything to do with a risk, as
 3 a matter of fact, you have been on television talking about
 4 risk analysis with cigarette smoking?
 5 A. No.
 6 Q. Never?
 7 A. I have been on television talking about the
 8 financial costs of cigarette smoking.
 9 Q. Well, okay, then maybe I am using the wrong word.
 10 Let's go back to the corporation, anything with
 11 regard to financial costs in all of those previous questions?
 12 THE COURT: You mean Chrysler and the latch?
 13 MR. FINZ: Yes.
 14 A. I have never done any work for Chrysler in my
 15 life.
 16 Q. How about anything -- okay, fine.
 17 A. Or Ford.
 18 Q. Good, all right.
 19 So with regard to cigarette smoking, you've done
 20 an analysis then of the cost?
 21 A. The finances, Social Security, insurance costs
 22 associated with smoking.
 23 Q. And you came to the conclusion that it costs the
 24 government less money for people, if people continue to smoke
 25 and die at an early age; right, yes or no?

1 A. Yes.
 2 Q. As a matter of fact, you did a calculation that
 3 the government could save 32 cents on every pack of
 4 cigarettes it sold if people continue to smoke?
 5 A. That is what they currently save, 32 cents, yes.
 6 MR. FINZ: Could we flash this thing.
 7 MR. HOWARD: Sure.
 8 (Displaying.)
 9 Q. This was shown a little while ago, Professor
 10 Viscusi, what companies has he worked for.
 11 There is a couple of companies that are missing
 12 from that, right?
 13 A. There are many companies that are missing.
 14 Q. Well, how about the tobacco companies?
 15 A. I felt --
 16 Q. When did you first start working for the tobacco
 17 companies?
 18 A. I'm --
 19 Q. You can take that --
 20 A. Well, I have worked for law firms representing
 21 the tobacco industry.
 22 Q. When did you first start working for law firms
 23 representing the Tobacco industry?
 24 A. I believe it is 1987. It could be '86 or '87,
 25 something like that.

1 Q. What was the name of that company?
 2 A. Jones, Day, Reavis & Pogue.
 3 Q. They represented at the time who?
 4 A. R. J. Reynolds.
 5 Q. That was at a time when cigarette cases were
 6 starting to come up?
 7 A. There were some cigarette cases, yes.
 8 Q. And you started to do certain research for them?
 9 A. No, I was involved in telling them what the
 10 research literature was.
 11 Q. We will get back to that in a little bit.
 12 How many times have you testified on behalf of
 13 the tobacco company?
 14 A. Well, this case and the other case with you and
 15 three other cases in court, and maybe 15 other depositions.
 16 Q. And have you done other work for the tobacco
 17 companies, since 1987 up until the current time?
 18 A. I did a report analyzing the audits and surveys
 19 data, and I spent one more consulting on the design of the
 20 hazard warning for the Premiere cigarette, that's it.
 21 Q. That's the total amount of work you have ever
 22 done for any tobacco company or law firm representing a
 23 tobacco company?
 24 A. Well, we have the litigation work, there's also a
 25 couple of government submissions, one I think was the

1 Occupational Safety and Health Administration, the others
 2 involve the FTC and FDA, so it would be just testimony and
 3 the two consulting episodes other than testimony.
 4 Q. Now, as far as risk analysis, that was your
 5 testimony, did you ever write anything about risk analysis in
 6 cigarette smoking prior to the time that you started to work
 7 for the law firm representing R. J. Reynolds tobacco?
 8 A. Yes, in fact, I didn't write it, but I had
 9 already run the survey that was subsequently written up.
 10 Q. I asked you if you ever wrote anything with
 11 regard to smoking before you were working for the law firm
 12 that was representing the tobacco company?
 13 A. No, nothing was published.
 14 Q. Let me ask you this, does cigarette smoking cause
 15 lung cancer?
 16 A. In some people, yes, but not in everybody, so it
 17 increases the risk of smoking -- of dying from lung cancer.
 18 Q. I want to know if it causes lung cancer.
 19 MR. HOWARD: Objection, your Honor, beyond
 20 the scope of this witness' expertise, he is not an
 21 oncologist.
 22 THE COURT: If you know based on your
 23 research.
 24 A. In some people, it causes it, not everybody will
 25 get lung cancer because they smoke, but it definitely

1 increases the probability of getting lung cancer. I'm not
2 talking about probabilities. I want to know cause and
3 effect.

4 MR. QUIGLEY: Objection, your Honor, it is
5 beyond this witness' expertise.

6 THE COURT: I will allow it.

7 A. It.

8 Q. Yes or no, yes or no, does it cause lung cancer?

9 MR. QUIGLEY: Objection, if he wants an --

10 THE COURT: I believe that calls for a yes

11 or no.

12 A. Not in every smoker, so yes, in some smokers.

13 Q. Well, in a case called Apostolou --

14 A. That's your case.

15 Q. -- were you asked this case, and did you give
16 this answer:

17 "QUESTION: You're not disputing, let's find
18 out, do cigarettes cause lung cancer?

19 ANSWER: Cigarettes?

20 QUESTION: Yes or no?

21 ANSWER: I have always said no."

22 Did you change your mind from --

23 MR. QUIGLEY: Can I see that?

24 MR. FINZ: (Handing.)

25 Q. January 82000 one until today?

1 A. No, my mind is always the same, the cause of
2 anybody getting lung cancer, the answer is no. The answer in
3 terms of some smokers getting lung cancer, yes. I always
4 said smoking increases the risk of lung cancer.

5 MR. HOWARD: Could you mark that page?

6 MR. QUIGLEY: Or read the next two.

7 Q. What I would like to ask you, what was the first
8 tobacco case you got involved with for a tobacco company?

9 A. The first case was the Mississippi State case
10 against the tobacco industry, I believe.

11 Q. When was that?

12 A. In the mid-1990s, late 1990s, I would guess, '97,
13 it is a ballpark, I'm not sure of the exact year.

14 Q. Was that the first case you got involved with?

15 A. It is the first case I was ever deposed in.

16 Q. How many hours did you spend working in that
17 case, approximately?

18 A. I have no idea.

19 Q. Ten, 50, more or less?

20 A. I remember it was five years ago.

21 Q. What was the next case you worked on for a
22 tobacco company?

23 A. I don't know the order. I can name some of the
24 state cases that happened around that time.

25 Q. Well, why don't you name what you remember?

1 A. Mississippi, Texas, Florida, Minnesota, and the
2 State of Washington, were the five state cases in which I was
3 deposed.

4 Q. How about Texas?

5 MR. HOWARD: He said that.

6 Q. How about the Ohio Ironworkers' Case?

7 A. Ohio ironworkers, I did testify in the court.

8 Q. State of Minnesota, State of Florida litigation?

9 MR. HOWARD: He said that.

10 Q. Blue Cross litigation?

11 A. That was not a state case, but that came
12 afterwards, that was the same week as your case.

13 Q. And that -- and since then, have you testified in
14 any other cases?

15 A. One, one since the time I have testified in your
16 case, and today makes the second time.

17 Q. In all of those cases, you have testified for the
18 tobacco companies?

19 A. Yes.

20 Q. Which companies did you testify for?

21 A. I'm not sure, they always name who it is, usually
22 it is Philip Morris, R. J. Reynolds, I don't think I have
23 ever testified for anybody else.

24 Q. Obviously, you have never testified for a
25 plaintiff in a tobacco case, right?

1 A. That is correct.

2 Q. Why don't we go to some polls.

3 You mentioned, you testified about some polls,
4 one was a 1954 poll, and the question was, have you heard or
5 read anything recently to the effect that cigarette smoking
6 may be a cause of cancer of the lung, do you remember that?

7 A. Yes.

8 Q. That was 1954, by the way, what was the
9 population in 1954 in the United States?

10 A. I don't know, 100 million, I have no idea.

11 Q. 100 million, and --

12 A. 150 million, you know.

13 Q. 150 million?

14 A. I have a very soft estimate, I don't know the
15 estimate.

16 Q. Between, should we say approximately 150 million?

17 A. That is a guess, but I really have, I don't have
18 a firm idea of the answer.

19 Q. First of all, this question, have you heard or
20 read anything recently to the effect that cigarettes may be,
21 may be a cause of cancer in the lung, that is, that is not a
22 very definitive question, is it?

23 A. It is not as definitive as my 100 Smokers
24 Questions.

25 Q. And the answer was yes, 90 percent of the people,

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1 according to that particular poll said they heard or read
2 something that smoking may be a cause of lung cancer, and ten
3 percent said no.
4 So if we use the 150 million, would it be fair to
5 say 15 million people did not know in 1954, according to this
6 poll?
7 A. That sounds fair.
8 Q. Let's go to this other poll that you did or that
9 you read, 1954 as well.
10 Do you think cigarette smoking is harmful or not?
11 A. Now, this doesn't even talk about cancer at all,
12 this poll, no.
13 Q. And this was '54 as well, 70 percent of the
14 people said yes, 23 percent of the people said no, and six
15 had no opinion.
16 So would that mean that, I probably got the math
17 wrong, 23 -- somewhere about 30 million people did not know
18 that?
19 A. Yes, that's what they said.
20 Q. Now, let's go to the poll of 1957, by the way, in
21 1954, do you know what the Frank -- did you ever hear of the
22 Frank statement?
23 A. Yes, I have.
24 Q. You are familiar with that document; right?
25 A. Yes.

Dr. Viscusi - Direct - Defendant

1 Q. Then you went to a study, 1957, did you happen to
2 hear or read about the recent report of the American Cancer
3 Society, reporting the results of a study on the effect of
4 cigarette smoking, 77 percent said yes, 23 percent said no.
5 What was the population in 1957?
6 A. Well, I have been ballparking it at 150 million
7 which may or may not be accurate.
8 Q. I suspect it went up from 1954?
9 A. We are dealing with really round numbers, it is
10 probably up.
11 Q. What would you say it is up to?
12 A. If it was 150 million, we will call it 153
13 million.
14 Q. 153 million.
15 This question isn't very specific, either, do you
16 happen -- did you happen to hear or read about the recent
17 report of the American Cancer Society reporting the results
18 of a study on the effects of cigarette smoking?
19 That's not very specific, is it, it doesn't
20 mentioned cancer, does it?
21 A. Yes, American Cancer Society, it mentions a
22 particular report, so it is a very specific question.
23 Q. There is a way to skew a question, in economic
24 statistics; right?
25 A. Some questions can be skewed, yes.

Dr. Viscusi - Direct - Defendant

1 Q. Tobacco company said smoking is not injurious to
2 health; right?
3 A. I don't recall those being the exact words.
4 Q. Well, something to that effect, why don't you
5 take a look at the Frank statement?
6 COURT OFFICER: (Hanging.)
7 A. We believe the following products are not
8 injurious to health, is that what you said.
9 Q. Let me ask you this, in 1954, did the public know
10 something that the tobacco companies didn't know; is that
11 your testimony?
12 A. The public --
13 Q. Yes or no?
14 A. No.
15 Q. So the tobacco companies knew that it was, it
16 caused cancer as well in 1954?
17 A. I don't know that anybody --
18 Q. Yes or no?
19 A. I don't know what they knew.
20 Q. Well, you didn't study that at all, to see what
21 the tobacco companies knew?
22 A. No.
23 Q. Did you ever look at the internal documents of
24 the tobacco companies?
25 A. No.

Dr. Viscusi - Direct - Defendant

1 Q. Then you can ask them point blank, you can say
2 this question could have said, what do you think, does
3 cigarette smoking cause lung cancer, that would have been a
4 more direct question; right?
5 MR. HOWARD: Objection your Honor, the same
6 poll has that question.
7 THE COURT: I will allow it.
8 Q. That could have been a more direct question?
9 A. It is an entirely different question, this
10 question asks have you read about an economic study, the next
11 question in the survey asks do you believe smoking causes
12 lung cancer.
13 Q. But that we didn't go to that?
14 A. We did, we presented that question as well.
15 Q. Maybe that is the next one, we will take a look
16 at that one then.
17 If the population in 1957 was also about 150, 153
18 million and 23 percent of the people said no, 35 million
19 people?
20 A. Sure, 35 million people.
21 Q. 35 million people?
22 A. Said no.
23 Q. Said no.
24 The next one you looked at, maybe this is the
25 question, 1957, what is your opinion, do you think cigarette

1 smoking is one of the causes of lung cancer? Yes, 50
2 percent, it looks like that number dropped pretty
3 dramatically from the last question, which was, did you hear
4 about a report which was 77 percent, the number went down by
5 22 percent; right?

6 A. 50 percent who said yes, and another 25 percent
7 who are now undecided, 26 percent.

8 Q. And then when the question was asked, what is
9 your opinion, do you think cigarette smoking is one of the
10 causes of cancer of the lung, only 50 percent of the people
11 said yes, 24 percent said no, and 26 percent were undecided?

12 MR. HOWARD: I think there is some
13 confusion, your Honor, that is the testimony, the
14 question he was just testifying about.

15 THE COURT: I will allow it.

16 Q. So if we're dealing with the same 153 million
17 people, about 76 million people, well, why don't we do it
18 this way, about 35 million people just didn't know, they were
19 undecided; right?

20 A. 35 million were classified undecided.

21 Q. And about 32 million people said no?

22 A. All right.

23 Q. Right?

24 A. Yes.

25 Q. And if you add up undecided and the no's, you

1 have about 75 million people who did not say yes to that
2 question?

3 A. Half the population would have said no or
4 undecided.

5 Q. Then you went, and that was 1957, by the way, in
6 1957, that was an important year, wasn't it?

7 A. The American Cancer Society report.

8 Q. So would you agree that that information in 1957
9 wasn't really getting out the way it should be, if 50 percent
10 or 75 million Americans didn't answer yes to that question?

11 A. No, because you have 70 percent of the people had
12 heard the information, and were aware of it, and with the
13 numbers you are referring to have to do with risk belief, how
14 many people believe in the lung cancer smoking linkage, which
15 was not established definitely until '64, so this is new
16 information that is still emerging.

17 Q. In 1957, 50 percent of the population did not
18 believe that cigarette smoking caused cancer?

19 MR. HOWARD: Objection, mischaracterizes the
20 survey result.

21 A. No, it is 24 percent.

22 Q. Then 26 percent were undecided?

23 A. That is correct.

24 Q. Okay.

25 Now, you know when the tobacco companies engaged

1 a firm by the name of Hill & Knolton; right?

2 A. No.

3 Q. Did you ever hear of that firm?

4 A. I have heard of them.

5 Q. What do they do?

6 A. Marketing firm advertising firm.

7 Q. Public relations firm?

8 A. I guess, I don't know who they are.

9 Q. How about in the 1950s, they were the largest
10 public relations firm in the country; you didn't know that?

11 A. No.

12 Q. Well, have you ever reviewed any documents from
13 Hill & Knolton where each time a statement would come out,
14 that there's a causal relationship between smoking and
15 cancer, that there would be a counter-statement by the
16 Tobacco Institute or CTR through their public relations firm
17 Hill & Knolton; did you know that?

18 MR. HOWARD: Objection, your Honor, Number
19 1, beyond the scope, and Number 2, objection as to
20 counsel's characterization of the document. If he
21 wants to show Professor Viscusi a document, he can, I
22 object to the characterization.

23 THE COURT: I will allow it.

24 A. I have not read any such documents.

25 Q. I am sorry?

1 A. No, I have not read any such documents.

2 Q. Are you aware of that at all or is that news to
3 you?

4 A. That would be news.

5 Q. That's news to you?

6 A. Yes.

7 Q. Then the last one that was shown was 1969, and
8 the question was, all persons in the survey were then asked:

9 "What is your opinion, do you think cigarette
10 smoking is or is not one of the causes of cancer of the
11 lung?" Is 71 percent, so now that has increased from 50
12 percent in 1957?

13 A. That is correct.

14 Q. Is not 11 percent, no opinion 18 percent.

15 What was the population in 1969?

16 A. Well, continuing my estimates, which I still
17 don't know, let's say it is 170 million.

18 Q. 170 million.

19 So 170 million, you have at least about 18
20 million people still did not think that; right?

21 A. Correct.

22 Q. And you had about 25 million people who had no
23 opinion; right?

24 A. Including infants and children, so it is the
25 whole population.

1 Q. Yes, okay, fine.
2 Now, that correspondence with, when did the
3 government mandate, require tobacco companies to put warnings
4 on their cigarettes?

5 A. The act was passed in '65 requiring warnings
6 beginning in 1966.

7 Q. Then in 1969 Public Health Cigarette Act?

8 A. That was the second act that required warning.

9 Q. Before that, was there ever a warning on any
10 cigarette pack in America?

11 A. Not to my knowledge.

12 Q. Was there any warning ever published by a
13 cigarette company that their cigarettes caused cancer prior
14 to that act?

15 A. Not as far as I know.

16 Q. Do you think warnings work at all, yes or no?

17 MR. HOWARD: Objection, vague.

18 THE COURT: I will allow it.

19 A. It depends, some warnings -- yes, warnings can
20 work, it depends.

21 Q. Warnings are a good thing?

22 MR. HOWARD: Can he finish his answer?

23 A. It depends on the content.

24 THE COURT: You have to let him finish his
25 answer. Don't crowd him.

1 COURT OFFICER: I just wrote "redact".

2 MR. FINZ: If that is the case, there was
3 all of the poll information that was flashed up on the
4 board spoken about and on cross-examination.

5 THE COURT: You have a point, Mr. Finz, we
6 did hear a lot about polls already. So maybe we will
7 revisit that ruling and let the poll stand.

8 Have you seen the poll?

9 MR. HOWARD: I have not seen that. What I
10 would ask, I'm not objecting to Professor Viscusi
11 commenting and discussing the poll, that is proper
12 cross-examination, but if it is going to come into
13 evidence, I would offer it in evidence. All of the
14 polls I used on my direct examination with Professor
15 Viscusi, I just used demonstrative, I would be happy
16 to put those polls in as defense exhibits.

17 MR. FINZ: This is not a poll, this is an
18 internal memo, as I am looking at it again, it is an
19 internal memo of the Philip Morris.

20 MR. QUIGLEY: It is subject -- it is subject
21 to redaction of the polls within the memo.

22 MR. FINZ: That is not correct. They are
23 reporting information in their own internal document.

24 MR. HOWARD: Like I said, I will offer all
25 my polls and this one can come in as well, we can

1 MR. FINZ: I'm backing up.

2 A. Warnings that provide new information and are
3 credible have a constructive role to play.

4 Q. And for all of those people that we talked about
5 who didn't believe it, at least a good percent of those, if
6 they had the information, maybe they would have changed their
7 mind with information, right, because information is
8 important?

9 A. We don't know that these people didn't have the
10 information.

11 Q. Right, you don't know, one way or the other;
12 right?

13 A. No, we know from an earlier question that 90
14 percent of the people had heard the information already.

15 Q. All right.

16 Why don't we do this, let's go to another poll,
17 this is a report of a poll dated October 7, 1953, plaintiff's
18 Exhibit 24 in evidence.

19 MR. HOWARD: Your Honor, I want to alert the
20 Court that this document was admitted subject to the
21 redaction of the poll information, which was
22 determined to be hearsay, so if he's going to read the
23 poll information, that is not in evidence.

24 MR. FINZ: I don't recall that, Judge, but
25 if that is, in fact, the case.

1 clear this right up.

2 MR. FINZ: Page six, under health questions,
3 this is a memo from Mr. Weissman who was a senior
4 person at Philip Morris.

5 MR. HOWARD: Your Honor, I don't know how
6 Professor Viscusi has already testified he has never
7 seen internal company documents can authenticate poll
8 data reported second source in such a document, he was
9 using today certified copies of actual polls from
10 gallop.

11 THE COURT: Unfortunately, I can't tell you
12 what was going to be redacted out of this thing right
13 now without going through the record.

14 MR. HOWARD: I don't know --

15 THE COURT: If you're only going to deal
16 with the last three lines, the last three paragraphs.

17 MR. FINZ: Yes, Judge.

18 THE COURT: Do you have --

19 MR. HOWARD: I don't even have a copy.

20 THE COURT: Take a look at it.

21 MR. FINZ: (Hanging.)

22 MR. HOWARD: You see I have a problem with
23 it, we don't have the actual poll information and
24 questions that were asked, in any way, to understand
25 the cigarettes of these numbers.

1 THE COURT: We didn't have all of the
2 information either on his polls.

3 MR. HOWARD: We did, I gave the actual
4 questions to counsel, he has been cross-examining
5 using the exact language in the questions.

6 THE COURT: What's the difference here?

7 MR. HOWARD: Because this does not reflect
8 what the questions were that the numbers are coming in
9 response to.

10 THE COURT: The question is --

11 MR. HOWARD: The professor already testified
12 to the importance of the question.

13 MR. FINZ: I also offered --

14 THE COURT: What harm is there in
15 cigarettes, that is the question?

16 MR. HOWARD: I was talking about the first
17 two lines, your Honor.

18 THE COURT: Where are you, what page?

19 MR. HOWARD: On page six.

20 THE COURT: Right.

21 MR. HOWARD: Under health questions, the
22 first two sentences that begin "all smokers, the" --

23 THE COURT: We don't know what those
24 questions --

25 MR. HOWARD: We don't know the questions in

1 the first two sentences.

2 THE COURT: You are absolutely right. We
3 know the question in the second paragraph. We can
4 take it from there.

5 MR. FINZ: I also offer it as an admission,
6 it is an internal document.

7 THE COURT: It is already in.

8 MR. FINZ: That portion of it is an
9 admission.

10 THE COURT: It was, no, no.

11 MR. HOWARD: That is what is subject to
12 redaction, we don't know what the question is.

13 THE COURT: You want to work on the second
14 two paragraphs, that's okay, but the other part
15 relates, we don't know what it is talking about.

16 MR. FINZ: Your Honor, the first paragraph
17 is what addresses the data.

18 THE COURT: But they don't specify the
19 question. The questions in there, you talk the second
20 question is listed there.

21 MR. FINZ: Although it does say "cancer".

22 THE COURT: What else does it say in the
23 question?

24 MR. HOWARD: Well, your Honor, I would
25 rather not have --

1 THE COURT: He haven't had the results then.

2 MR. FINZ: Then I will pass over it.

3 THE COURT: If you want to go with the
4 second one, that's the ruling; otherwise, we really
5 don't know what the question said.

6 Q. Now, you are familiar with the gallop poll, 1949
7 through 1958, that's, we looked at some of those before,
8 right?

9 A. I have seen polls back to 1949 from gallop.

10 Q. Now, are you familiar with the gallop poll of
11 1957, where they asked, what is your opinion, do you think
12 cigarette smoking is one of the causes of cancer of the lung?

13 MR. HOWARD: Your Honor, could I see what he
14 is reading from?

15 MR. FINZ: Indicating.

16 Your Honor, it is the gallop firm, the same.

17 MR. QUIGLEY: It is a bunch of pages
18 missing, it is not the same poll.

19 THE COURT: You are not offering it. You
20 are asking a question about the poll?

21 MR. FINZ: Yes.

22 MR. QUIGLEY: Show the witness, if it is
23 impeachment, it is impeachment.

24 THE COURT: Let's ask the question first,
25 ask him if he is familiar with the poll, then go on

1 from there.

2 Q. Are you aware of the gallop poll in 1957 where
3 the question was asked, what is your opinion, do you think
4 cigarette smoking is one of the causes of cancer of the lung,
5 the answer was yes, only by 47 percent of the population.

6 Are you aware of that?

7 A. No, because we present evidence, I believe, later
8 in 1957.

9 Q. Well, I am talking about 1957.

10 A. A different month, yes.

11 Q. So you are unaware of that?

12 A. I probably have seen the poll, I am not aware of
13 the exact number.

14 Q. Wouldn't that have been important to you in your
15 analysis, if you are talking about the '50s and what people
16 knew, would that not be important to look at the gallop poll
17 under the question of cancer and cigarette smoking?

18 A. I looked at all gallop poll results.

19 THE COURT: You said it is a different
20 month.

21 THE WITNESS: It is a different month in
22 1957.

23 THE COURT: How many polls are there a year?

24 THE WITNESS: I believe there are two, one
25 before the American Cancer Society report and one

1 after.

2 Q. Well, did you look at both of them?

3 A. Not for this case, I may have seen it sometime in
4 the past.

5 Q. Are you aware that with that question, what is
6 your opinion, do you think cigarette smoking is one of the
7 causes of cancer of the lung, 32 percent of the population
8 said no, now, I think in 1957, you said there was, 153
9 million people, it is about 45 million people, said no.

10 A. Would have said no, if they responded, if that
11 was the percent.

12 Q. No opinion was 21 percent, so that's another,
13 another 30 million --

14 A. Right.

15 Q. -- said they had no opinion, one way or the
16 other, in 1957?

17 A. That's right.

18 Q. Now, if the same question was asked of cigarette
19 smokers, what is your opinion, do you think cigarette smoking
20 is one of the causes of cancer of the lung, only 35 percent
21 of cigarette smokers said yes; did you know that?

22 A. I didn't memorize the numbers.

23 MR. HOWARD: Does he want to show him the
24 document, your Honor?

25 THE COURT: If he wants to introduce it, no,

1 you don't.

2 MR. FINZ: I don't want to introduce it.

3 Q. I just want to know if you know that.

4 A. I don't know the exact number, I know the numbers
5 after the American Cancer Society report came out.

6 Q. I am talking about these numbers from the 1957
7 gallop poll, do you know about these numbers?

8 A. I have read the poll in the past, but I don't
9 know the exact numbers.

10 Q. With that same question, did you know that 48
11 percent of the population answered no?

12 MR. HOWARD: Excuse me, 48 percent of
13 smokers.

14 MR. FINZ: Yes.

15 MR. HOWARD: You said the population.

16 MR. FINZ: That is what I am talking about,
17 the smokers, smoking population said no.

18 Q. Did you know that?

19 A. As I have said, I read the polls, I didn't
20 memorize the answers, it has been a couple of years since I
21 read it.

22 Q. In 1957, how many people were smoking, what was
23 the smoking population in 1957?

24 A. I don't know, it was higher than it is today, so.

25 Q. A lot higher; right?

1 A. If I were to guess, 35 percent of the population,
2 this is a ballpark, I don't know.

3 Q. You don't know?

4 A. It is higher than 25 percent.

5 Q. Today or then?

6 A. Then, now it is about 24 percent.

7 Q. Wasn't it more like 40 percent?

8 A. I said about 35 percent, something like that, it
9 could be 40 percent.

10 Q. 40 percent, do you agree with that?

11 THE COURT: He said it could be.

12 A. It could be, I don't know.

13 Q. If we take 40 percent, just because it is easier
14 to calculate, 40 percent of smokers and 48 percent of them
15 said no -- I am sorry, 40 percent of the population were
16 smokers and there were 150 million, so that's say 60 million
17 people were smoking, approximately?

18 MR. HOWARD: Objection, your Honor, that
19 mischaracterizes the demographics of the United
20 States. I don't think babies were smoking.

21 THE COURT: We're talking generally, he
22 factored in babies and whatever.

23 MR. FINZ: Right.

24 Q. So about 60 million people were smoking?

25 A. If you assume babies can smoke, yes.

1 Q. Well, you didn't factor that out when I asked you
2 how many people were smoking, you gave me the number?

3 A. No, you -- I was saying 40 percent of the adult
4 population, all of the smoking statistics of the adult
5 population.

6 Q. What was the number of the adult population,
7 let's factor out the babies?

8 A. I don't know, let's say 100 million.

9 Q. 100 million?

10 A. I am making this up.

11 Q. You have 100 million and you have 40 percent
12 smoking, you have 40 million people smoking, right, so out of
13 smokers then, according, according to this question, you have
14 about 20 million smokers didn't have the information?

15 MR. HOWARD: Objection.

16 A. That is not what the question said.

17 Q. Let me read the question.

18 THE COURT: Hold on.

19 Are you going to finish before lunch?

20 MR. FINZ: No.

21 MR. QUIGLEY: How long is he going to go?

22 THE COURT: Give or take.

23 MR. FINZ: Without holding me to it, 45
24 minutes.

25 THE COURT: I don't think you will be that

long.
 MR. FINZ: Less than 45 minutes.
 THE COURT: We are going to take our luncheon recess, ladies and gentlemen. It is not the moment for deliberation. I was hoping to, I think we are going to have something different this afternoon. Something different for everybody.
 Let's have a pleasant lunch. Please follow the instructions of the Court Officer. We will resume at 2:10, 2:20.

(Whereupon, a lunch break was taken.)

(Whereupon, Official Court Reporter Laura Eriksen was relieved by Official Court Reporter Toni Tarrobino.)

THE COURT CLERK: Please remain seated and come to order.
 MR. FINZ: Good afternoon, your Honor.
 MR. QUIGLEY: Good afternoon, your Honor.
 MR. HOWARD: Good afternoon, your Honor.
 MS. YAKABOSKI: Good afternoon, your Honor.
 THE COURT OFFICER: Jury entering. All rise.
 (Whereupon, the jury entered the courtroom.)
 THE COURT CLERK: The 12 sworn jurors are present.
 Counsel, do you waive the reading of the roll?
 MR. FINZ: Yes, I do.
 MR. QUIGLEY: Yes, we do.
 THE COURT CLERK: Thank you. Please be seated.
 THE COURT: Good afternoon, ladies and gentlemen.
 THE JURY: Good afternoon.
 THE COURT: Good afternoon, Professor.
 THE WITNESS: Good afternoon, your Honor.
 MR. FINZ: Thank you, Judge.
 Good afternoon, your Honor, counsel, Professor Viscusi.

And ladies and gentlemen, good afternoon.
 THE JURY: Good afternoon.

CROSS-EXAMINATION

BY MR. FINZ:

Q. Okay. I think when we left off we were in the middle of '57 and moving on to '58, and I did some of the math over lunch so we'll speed things along.

In 1958, you're aware of the Gallup poll, I suspect, Professor?

A. I've seen lots of Gallup polls. I'm not sure which one this is.

Q. It's the question that asks, "What is your opinion, do you think cigarette smoking is or is not one of the causes of cancer of the lung?" Are you aware of that one in 1958?

A. I'm sure I've seen it. I don't remember the results.

Q. Would you agree that the people who said yes was 44 percent and the people that said no was 29 percent and the undecided was 27 percent? Would you agree with that?

A. If I saw the poll I probably would.

Q. Would you want to take a look at it?

A. Sure. I don't have the poll.

Q. It's highlighted in yellow (handing)?

THE COURT OFFICER: (Handing.)

A. 44, 29, 27 (handing).

THE COURT OFFICER: (Handing.)

Q. Thank you.

Now, using the same population numbers, that would mean in 1958, 45 million Americans said no, 40 million Americans were undecided approximately, right?

A. Which accounts for the hundred percent, right.

Q. Okay. Now, let's go to another Gallup poll in 1958. The question was, "Do you think cigarette smoking is one of the causes of cancer of the lung?" Yes, is a cause, 45 percent, no, is not 14 percent, and undecided 21 percent. Would you agree with that?

A. Probably if those are the numbers I saw, yes.

Q. All right. And would you also agree then that that translates to approximately 42 million people said no, about 30 million people were undecided? Would you agree with that?

A. I didn't do the math, but I assume you did it right.

Q. Okay. Why don't we go to the last poll that I'm going to do with you.

It's another Roper poll. This is 1959.

By the way, when was it that Roseanne started to smoke?

MR. HOWARD: Objection to form.

1 THE COURT: If you know.
2 Do you know?
3 THE WITNESS: I heard she had her first
4 cigarette in 1959.
5 Q. Okay. So let's look at the 1959 Roper poll.
6 And here the question was, "The trouble with
7 cigarettes is that they 'blank.'"
8 MR. HOWARD: I'm going to object, your
9 Honor. I think I know the poll he's reading from.
10 It's not a public poll. Something different. And I
11 would like him to lay a foundation for what this is.
12 THE COURT: Make a foundation.
13 MR. FINZ: All right.
14 Q. Are you aware of a poll done by Roper &
15 Associates entitled A Study of Attitudes Toward Cigarette
16 Smoking and Different Types of Cigarettes, January 1959?
17 Ever hear of that?
18 A. Yes.
19 Q. Yes?
20 A. Yes.
21 Q. All right. Now, are you aware of the question
22 that asks, in 1959, "The trouble with cigarettes is that they
23 'blank,' and then they give you a couple of choices?
24 A. No, that's not correct.
25 Q. What's not correct?

1 A. That they gave people choices. They did not give
2 people choices. This is an open-ended question in which they
3 coded up people's open-ended responses, but they did not
4 explicitly give people choices in the question.
5 Q. Okay. So they left it open?
6 A. Open-ended.
7 Q. Which is probably a good way to do it because it
8 doesn't skew the question one way or another, right?
9 MR. HOWARD: Objection.
10 THE COURT: I'll allow it.
11 A. Yes.
12 Q. So now when people responded, are you aware that
13 the number of respondents were 2,064, and the question under
14 category Physically Harmful, the total under that category
15 was 22 percent? And the first question, the first response,
16 Make You Cough, Affect Your Throat, 8 percent; Contain
17 Harmful Elements, 6 percent; Harmful to Your Lungs When
18 Breathing, 3 percent; Cause/Could Cause Cancer, 1 percent.
19 Are you familiar with that?
20 A. Yes.
21 Q. Now, this is 1959. Using the same population
22 that we used before, would it be fair to say that
23 approximately 148 million out of the 150 million people did
24 not say could cause or causes cancer?
25 MR. HOWARD: I'm going to object at this

1 point with that question, objecting to the total
2 population. I think that's misleading, your Honor.
3 THE COURT: We've been through that in
4 contexts of babies and people.
5 Q. So make it a hundred million people.
6 THE COURT: All right.
7 A. It's even worse than that, your Honor, because
8 this is an unfair characterization of what this question
9 does.
10 This question --
11 Q. I'm not asking what the question does. You may
12 be asked that by the Philip Morris attorneys.
13 A. All right.
14 Q. I just want to know if you're familiar with that
15 result of this poll.
16 A. I'm familiar with the numbers.
17 Q. Do you disagree with them? Yes or no?
18 MR. HOWARD: Objection to form, your Honor.
19 A. I disagree with your interpretation.
20 THE COURT: I'll allow it.
21 Q. Well, just so there's no question about
22 interpretation, let me just read it again.
23 "The trouble WITH cigarettes is that they," and
24 then under Physically Harmful, under category Cause/Could
25 Cause Cancer, 1 percent. I'm not interpreting that.

1 MR. HOWARD: Objection. We'll stipulate to
2 the number on the document as being 1 percent.
3 THE COURT: Okay.
4 MR. FINZ: Thank you.
5 Q. Now, you're familiar with the Federal Trade
6 Commission, right?
7 A. Yes.
8 Q. And have you used the Federal Trade Commission
9 data to factor into your assessment of the risk -- perception
10 of risk?
11 A. They did some of the --
12 Q. Yes or no?
13 A. Some of the --
14 MR. HOWARD: Objection, your Honor. He
15 didn't explain what he used the data for.
16 THE COURT: Well, no, the question is either
17 yes, no, or I can't answer it.
18 A. Yes, I've used some of the data.
19 Q. And the Federal Trade Commission is certainly
20 authoritative, right?
21 A. I don't agree with everything every staff member
22 has written IF that's what you mean by authoritative.
23 Q. How about the public version Federal Trade
24 Commission staff report on Cigarette Advertising
25 investigation dated May 1981? Are you familiar with that?

1 A. I've read a number of their reports. I don't
2 remember which one this is.
3 Q. Well, let's jump way ahead to 1978, 19 years
4 after the last poll, and it's another Roper poll, part of the
5 report, the FTC report, Smoking Causes Lung Cancer.
6 I'm sorry. This one is a Gallup poll, Smoking
7 Causes Lung Cancer.
8 MR. HOWARD: Your Honor, I would object to
9 reading from these documents with no foundation.
10 Q. I want to know if you agree with this or not.
11 MR. HOWARD: We don't even know what he's
12 reading from.
13 MR. FINZ: I'll tell you.
14 Here's a copy (handing).
15 MR. HOWARD: Thank you.
16 Where are you reading from?
17 MR. FINZ: I'm reading from page 17.
18 THE COURT: Are you referring from a Gallup
19 poll?
20 MR. FINZ: Yes, data that's recorded from
21 the Gallup poll.
22 THE COURT: Of what year?
23 MR. FINZ: 1978.
24 THE COURT: Are you familiar with that
25 particular poll or have you seen it before? Have you

1 Q. 200 million people?
2 A. Yes.
3 Q. So if we took an average 19 to 23, call it the
4 low end, 20 percent of 200 million would be --
5 A. First of all, the numbers you gave are not
6 correct because unaware included the nos as well as the
7 undecideds. So you pooled those for the unawares, and I
8 think it's just misleading to put the don't knows with the
9 nos. I just want to make that clear that that's what you're
10 doing.
11 Q. That's fine. But right now I'm not talking about
12 pooling anything together. I'm reading, word for word, from
13 the Gallup poll of 1978 as I did from all the other polls.
14 MR. HOWARD: Actually, I object, your Honor.
15 This is a compilation chart from several surveys where
16 the Gallup is pooling. If he can show the Professor,
17 the Professor can be better equipped to answer it. I
18 believe, because he's mischaracterizing this document.
19 Q. Well, Professor, you said you're not even aware
20 of this poll?
21 A. No, I'm aware of what they did. I'm aware of
22 this report.
23 Q. But you're not aware of this poll?
24 A. I've read the report.
25 MR. HOWARD: Objection.

1 used it in your approach of your research and work?
2 THE WITNESS: Not to the best of my
3 knowledge, your Honor.
4 THE COURT: All right.
5 THE WITNESS: I may have seen the report.
6 THE COURT: Would you regard the Gallup poll
7 as an authoritative poll?
8 THE WITNESS: Gallup polls are good polls,
9 your Honor, yes.
10 MR. HOWARD: What page are you reading from?
11 MR. FINZ: Page 17.
12 CONTINUED CROSS-EXAMINATION
13 BY MR. FINZ:
14 Q. Are you familiar with this data Smoking Causes
15 Lung Cancer, 1978 Gallup poll, total percentage of population
16 unaware, 19 to 23 percent?
17 Now, do you know what the population was in 1978?
18 THE COURT: He didn't know what it was in
19 the '50s. How would he know what it was in the '70s?
20 MR. FINZ: Well, we're moving closer in
21 time.
22 Q. Would it be fair to say it was over 200 million
23 people?
24 A. It was around 170 million by 1960s. so, yes,
25 probably about 200 million.

1 THE COURT: Sounds to me like you're having
2 a little argument here, which I don't want.
3 Ask the question.
4 MR. FINZ: Thank you, Judge.
5 Q. Are you aware of the finding by the Federal Trade
6 Commission with regard to the Gallup poll of 1978 where 19 to
7 23 percent of the total population is unaware that smoking
8 caused lung cancer? Yes or no?
9 A. I don't consider this a finding, so no.
10 Q. Okay.
11 Are you aware of -- Roper is also authoritative,
12 right?
13 A. Roper survey methodology is good. This polls is
14 only as good as the questions as well.
15 Q. Okay. Now, in the Federal Trade Commission
16 report, are you aware of the Roper data where smoking causes
17 most cases of lung cancer, 1980 Roper? Are you aware of
18 that?
19 A. I don't know the exact numbers, but I've read
20 that in statistics.
21 Q. Okay. Would you agree that the percentage of
22 total population unaware of that in 1980 was 43 percent?
23 A. Or unaware includes nos and don't nos. I have no
24 reason to question what you're reading.
25 Q. Okay. So that's about 90 million people or maybe

1 more than that because you're up to 1980. Say 90 million
 2 people were unaware, right?
 3 MR. HOWARD: Objection to form.
 4 THE COURT: I'll allow it.
 5 Q. Approximately?
 6 A. Once again, either said no or don't know.
 7 Q. You agree?
 8 A. That sounds fine.
 9 Q. Now, you were asked about addiction and whether
 10 or not people were aware of the risk of addiction. Do you
 11 remember those questions?
 12 A. Yes.
 13 Q. Now, are you aware of the -- also in the Federal
 14 Trade Commission report, 1978 poll on addiction?
 15 A. Yes, I am.
 16 Q. And would you agree then with the finding of this
 17 study?
 18 This poll questions smoking is addictive. Number
 19 of population unaware, in 1978, 54 percent.
 20 A. That's an incorrect characterization of both the
 21 question as well as the answers. Ninety-six percent of the
 22 public in that poll said smoking is a habit, an addiction or
 23 both.
 24 Q. Well, what I asked you is whether or not you
 25 agreed with the finding in the Roper poll that's in the

1 Federal Trade Commission which asks the question smoking is
 2 addictive --
 3 MR. HOWARD: Objection.
 4 Q. -- and 54 percent of the population said they
 5 were unaware?
 6 THE COURT: I'll allow it.
 7 Q. Do you agree with that or disagree with that?
 8 A. It's not the question. You're misrepresenting
 9 the question.
 10 Q. Well, why don't you read the question to us.
 11 It's highlighted (handing).
 12 THE COURT OFFICER: (Handing.)
 13 Q. You could read it out loud.
 14 MR. HOWARD: I object to the question. The
 15 question isn't there.
 16 A. There is no text of the question here. It says
 17 smoking is addictive. That is not the question they asked in
 18 the survey. The question they asked in the survey is Is
 19 smoking a habit, an addiction or both, a habit and addiction,
 20 or neither a habit nor an addiction.
 21 Q. Is that what it says right there?
 22 A. No, this is not the text of the question.
 23 Q. What does that say right there?
 24 A. "Smoking is addictive."
 25 Q. And then it gives a percentage?

1 A. Yes. But that's not a question.
 2 Q. But you disagree with that?
 3 A. That's not a question.
 4 Q. Okay. Fine.
 5 And then if you go across the column, number of
 6 adults unaware, it says 85 million. Are you aware of that?
 7 A. That's assuming if they label it habit or both a
 8 habit and addiction that you're going to count them as
 9 unaware.
 10 Q. I'm counting it as it's counted in the Federal
 11 Trade Commission report on page 18 where it references
 12 addiction. I'm just reading from the document.
 13 A. I'm recalling the original survey results.
 14 Q. Okay. Do you have that survey here?
 15 A. I believe we do.
 16 Q. Okay.
 17 MR. FINZ: I offer the document into
 18 evidence.
 19 THE COURT: What document?
 20 MR. FINZ: The Federal Trade Commission --
 21 A. It's not the Federal Trade Commission. It's the
 22 Roper survey.
 23 THE COURT: I don't know what he's offering.
 24 One looked over there for the one --
 25 MR. FINZ: No, I would offer the public

1 version Federal Trade Commission staff report on
 2 cigarette advertising investigation which contains the
 3 data and the polls that we were just discussing.
 4 MR. HOWARD: Your Honor, I believe it is
 5 actually already in evidence as part of the 1989
 6 Surgeon General report which is Plaintiff's Exhibit
 7 66.
 8 So the poll question and the actual results
 9 of the poll are in your own document and you can refer
 10 to that.
 11 A. I believe it's page 200.
 12 THE COURT: Then it's not necessary.
 13 MR. FINZ: I'm not sure that this exact
 14 document is contained in the '79 Surgeon General
 15 report.
 16 THE COURT: You're concerned about the
 17 polls?
 18 MR. FINZ: Yes.
 19 THE COURT: If that's what you're concerned
 20 about, the polls are already in evidence.
 21 MR. FINZ: If they are.
 22 MR. HOWARD: This is a certified copy. You
 23 want to read it?
 24 MR. FINZ: Then I have no problem with it.
 25 THE COURT OFFICER: (Handing.)

1 A. Okay --

2 THE COURT: Well, there's no question before

3 you right now, Professor. So let's see if we can get

4 one in there real fast.

5 THE WITNESS: Okay.

6 Q. The next thing I want to talk to you about,

7 Professor Viscusi, is this chart (indicating).

8 MR. FINZ: Could we pull up this chart?

9 MR. HOWARD: Yes.

10 Q. Okay. Now, the first column that you have, 43

11 percent perceived lung cancer, right?

12 A. People perceive the risk as 43 out of a hundred.

13 Q. Okay. And where did that data come from?

14 A. The audits and survey that was funded by law

15 firms representing the tobacco industry.

16 Q. So all of the data in that first column came from

17 a survey company that was hired by law firms representing the

18 tobacco companies?

19 A. That's correct.

20 Q. And as a matter of fact, you had that data,

21 right?

22 A. Yes.

23 Q. And you reviewed that data?

24 A. Yes.

25 Q. And you published that data? You published your

1 impeachment, your Honor.

2 Q. "Question: If we wanted to look at that data to

3 see the validity of that case, would we be able to do

4 that?

5 "Answer: Not anymore. I kept the data for

6 five years. When I moved to Harvard, I didn't hold on

7 to the box of data, and I didn't mark -- I didn't make

8 trip."

9 "Question: You threw it out?

10 "Answer: I published the results and nobody

11 requested the data so, yes, I threw it out."

12 Did you say that?

13 A. I did, but I'm talking about different data. I'm

14 not talking about 1985.

15 Q. So which data is this that you threw out?

16 A. The 1991 data.

17 Q. Oh, so the -- so for the next column, 1991,

18 that's the data that you threw out?

19 A. I threw out the raw coding sheets, but I

20 published the results just the way Gallup poll would have

21 published their results. I published the means and standard

22 deviations for the subgroup.

23 Q. So if anybody wanted to check your conclusions

24 with regard to the 1991 column, the only thing they'd have

25 are your conclusions? They wouldn't have the raw data to see

1 interpretation of that data?

2 A. Yes.

3 Q. Do you have that data here today?

4 A. The individual observations for each --

5 Q. The data.

6 A. -- for each person?

7 Q. The data that made up this first column 43

8 percent, underlying data, so we could check the data to see

9 if it's accurate. Do you have it?

10 A. I didn't bring each person's response, no. I

11 make the data publically available, as I indicated in my

12 book, to anyone who wants it.

13 Q. Well, do you still have the data?

14 A. Yes.

15 Q. And were you ever asked this question and did you

16 ever give this response with regard to the data?

17 MR. QUIGLEY: What are you reading from?

18 MR. FINZ: I'm reading from part of the

19 transcript in the Apostoleu (phonetic) case.

20 MR. HOWARD: Can I see it before you read it

21 this time?

22 MR. QUIGLEY: Are you --

23 THE COURT: He doesn't have to show him.

24 Go on.

25 MR. HOWARD: Make sure it's a real

1 how you arrived at those conclusions, right? Yes or no?

2 A. They have all the data. All the individual

3 responses, no, they don't have those.

4 Q. And you knew that at some point -- I mean, by

5 that time, you had been working for tobacco companies for

6 four years?

7 A. I had never been retained.

8 Q. Were you working for tobacco companies for four

9 years?

10 A. I consulted to them on cases.

11 Q. Isn't that working for them, Professor?

12 A. Or not cases. On issues. Never been retained on

13 risk perception matter.

14 Q. You said before that you were working for Jones

15 Day law firm which represents tobacco companies since 1987?

16 A. I have consulted with them beginning there, not

17 every year, throughout that period.

18 Q. You're not saying you had an office in their

19 office? You're not suggesting as a consultant you weren't

20 working for them, are you?

21 A. Some years I did no work for them.

22 Q. But you've maintained a continuing relationship

23 since 1987 to this very minute where you were working for

24 them, right?

25 A. That's not true. I never said that.

1 Q. Did you think maybe it would have been important
2 to keep that one box of data so if somebody wanted to review
3 it and look at it we could have had an opportunity to do
4 that?

5 A. I've already published the result. Nobody
6 requested the data for five years. And I've written, you
7 know, a couple hundred articles, 20 books. If I kept all the
8 data, I'd need a warehouse to keep it in.

9 Q. How many boxes did it take to keep the data of
10 the 1991 survey that you flashed up there?

11 A. That was about a box.

12 Q. One box. Okay.

13 All right. Now, going to the next column, 1997
14 and 1998, do you know when Roseanne passed?

15 A. 1996, '94. Somewhere in there, but before '97.

16 Q. 1994.

17 These two columns would not be relevant to risk
18 that was known in 1994, would it?

19 MR. HOWARD: Objection, your Honor.

20 Q. Yes or no?

21 THE COURT: Wait a minute. Wait a minute.

22 Q. The '97 and the '98 column.

23 THE COURT: I'll allow it.

24 A. I disagree because they show that throughout this
25 period people had fairly stable perceptions in the 40 percent

1 range.

2 Q. Well, in the '97 column, your note below says,
3 Attitudes Toward Cigarette Smoking Audits and Surveys
4 Worldwide, February, 1997.

5 So that was a survey that was taken in 1997,
6 right?

7 A. Maybe the end of '96 as well.

8 Q. Now, you would agree, wouldn't you, that the
9 attitudes, as knowledge comes out, for example, today people
10 smoke less than they did five years ago, right?

11 A. That's true.

12 Q. And I suspect if we could extrapolate into the
13 future, five years from now, because more knowledge is coming
14 out, people will be smoking even less, right? Yes or no?

15 A. I don't think knowledge is going to do it, no.

16 Q. Okay. Just so I understand, the '85 data was
17 obtained through a survey that was done and paid for by the
18 tobacco companies, yes?

19 A. Correct.

20 Q. And the 1991 data is no longer available, yes?

21 A. The individual coding sheets are not, but the
22 results of the survey are available.

23 Q. Now, you're familiar with the 1989 Surgeon
24 General's report, right?

25 A. Yes.

1 Q. And you agree with the Surgeon General of the
2 United States, right?

3 A. Not on my turf. When the Surgeon General is
4 venturing forth into making judgements about risk perception
5 as opposed to medical issues, I disagree with the Surgeon
6 General often. But when the Surgeon General's making medical
7 judgements, I don't disagree with the Surgeon General.

8 Q. All right.

9 Well, let me ask you if you agree or disagree
10 with what the Surgeon General says about this:

11 "In the teenage smoking survey conducted by the
12 Department of Health, Education and Welfare in 1979 --"

13 MR. QUIGLEY: What page, Stuart?

14 MR. FINZ: Page Roman Numeral V.

15 Q. "-- respondents were asked what would you say is
16 the possibility that five years from now you will be a
17 cigarette smoker? Among smokers, half answered definitely
18 not or probably not. This response suggests that many
19 children and adolescents are unaware of or underestimate the
20 addictive nature of smoking."

21 You agree with that, right, the Surgeon General?

22 A. No, and there's been subsequent sur --

23 Q. Okay. You agree with the next sentence, "The
24 predecessor to this volume, The Health Consequence of
25 Smoking/Nicotine Addiction, provided a comprehensive review

1 of the evidence that cigarettes and other forms of tobacco
2 are addicting and that nicotine is a drug."

3 You know what? I'll leave that alone. You're
4 not an addiction expert.

5 Do you agree with this from the Surgeon General,
6 "Smoking begins primarily during childhood and adolescents."

7 Do you agree with that?

8 MR. HOWARD: Objection, your Honor. Also
9 beyond the scope.

10 THE COURT: It is. Sustained.

11 You're not going through the whole report
12 asking him whether he agrees or disagrees.

13 Q. All right. Are you familiar with Louis Harrison
14 & Associates, right? They're a polling company?

15 A. Yes.

16 Q. Reputable?

17 A. Yes.

18 Q. Authoritative?

19 A. Depends on the questions.

20 Q. Okay. Well, do you agree with this finding of
21 the Surgeon General:

22 "A national survey conducted --"

23 MR. QUIGLEY: What page are you reading
24 from?

25 MR. FINZ: 23.

MR. HOWARD: Thank you.

Q. "A national survey conducted in 1983 by Louis Harrison & Associates found that the public underestimates the health risks of smoking compared with many other health risks."

Do you agree with that?

A. I don't know what the poll actually asked.

Q. Do you agree with that statement?

A. I don't know if it's true or not.

Q. Do you agree with this statement by the Surgeon General on that same topic:

"The proportion of high school seniors who believe that smoking a pack or more of cigarettes a day causes great risk of harm increased from 51 percent in '75 to 66 percent in 1986."

Do you agree with that?

A. I have no reason to disagree.

Q. And on page 219 of the Surgeon General's report, under the topic Current Gaps in Public Beliefs About the Health Effects of Smoking, I want to know if you agree with this:

"Despite the growing level of public knowledge noted above, a substantial number of Americans are still uninformed about or do not believe the health risks of smoking."

other hand, that would be important information for a consumer to have in order to make an informed decision, right, as to whether or not to use the product?

"Answer: You would want to know all the properties of the product, those both dimensions, yes."

MR. HOWARD: Is this impeachment, your Honor? It wasn't even close to the same question and answer.

THE COURT: Well, if he thinks it's impeachment. He may not be --

MR. HOWARD: It's improper to read a transcript in --

THE COURT: If he thinks it's inconsistent, that's his position. You may not think so. That's the difference.

But, meanwhile --

MR. FINZ: We're just about finished, Judge. Just about finished.

Q. You said that, right?

A. Sure.

Q. And you agree with that statement that you made, correct?

A. Yes.

Do you agree with that?

A. I disagree.

Q. You disagree with that.

And the last thing I'm going to read to see if you agree or disagree with the Surgeon General's report of 1989 is:

"Another gap in public knowledge involves teenagers. Youth may understand that smoking is generally harmful to health, but many may not appreciate the addictive nature of smoking or may deny a personal susceptibility."

Do you agree with that?

A. No.

Q. Do not agree with that?

A. I do not agree.

Q. Okay.

Now, you would agree, wouldn't you, Professor, that in order to make a real choice about a product, it's important for consumers to have information, right, about that product? As much information as they could have?

A. You don't need to have as much. You need to have some. So I disagree.

Q. Let me ask you, were you asked this question and did you give this answer in the Apostoleu transcript?

"Question: And if a particular product that causes cancer on one hand and is addictive on the

Q. Now, you wrote a book -- when was it? 1992?

A. Two books in '92.

Q. Smoking, Risky Business, something like that?

A. Smoking, Making the Risky Decision.

Q. Okay. And by the way, you're familiar with the Lancet, aren't you?

A. Yes. You read me the review before.

Q. Sorry?

A. You read me the review before.

Q. And the Lancet -- what is the Lancet?

A. It's a medical journal.

Q. From where?

A. England.

Q. Prestigious?

A. Yes.

Q. Authoritative?

A. Not their book reviews.

Q. But authoritative journal of cancer?

A. I don't know. I'm not a doctor, so I wouldn't judge their field.

Q. And they criticized you and your book, right?

A. The book review by --

Q. Yes or no? Did they criticize you?

A. Not they, one book reviewer.

Q. Criticized you?

1 A. Yes.
2 Q. Criticized the book that you wrote, right?
3 A. Yes.
4 Q. Okay. And were you also criticized --
5 MR. QUIGLEY: Objection to the form.
6 THE COURT: Let's hear the whole question
7 first.
8 What book are you talking?
9 Q. Talking about the book by Harvard Law Review
10 article, yes or no?
11 A. Was I criticized in an article in the Harvard Law
12 Review?
13 Q. Yes.
14 A. Some of -- there was some disagreement.
15 Q. Yes or no?
16 A. I'm not sure I'd call it criticism, but
17 disagreement, yes.
18 Q. Well, were you criticized by a law review article
19 in Harvard, in the very school that you graduated from and
20 were at?
21 MR. HOWARD: Objection. He just answered
22 it.
23 Q. Yes or no?
24 THE COURT: He just said -- he did answer
25 the question.

1 A. A James T. Wilson review was critical?
2 Q. Weren't there questions asked as to whether or
3 not a Professor who testifies in court, who's a law
4 Professor, who writes articles in journals and testifies in
5 court and spreads their opinions on TV and in speeches should
6 be required to disclose payments received from the industry
7 or the interest groups that you work for?
8 A. This has nothing to do with smoking, but this is
9 not a -- it's an article criticizing in the Wall Street
10 Journal.
11 Q. So then you would agree it is important to
12 disclose how much you're being paid with regard to the work
13 you've done for the tobacco company?
14 A. No, it's important to disclose that the data that
15 came from them, which I've always done that. This is the
16 source of the data.
17 Q. Okay. And by the way, how much have you earned
18 from the tobacco companies so far?
19 A. Since 1987, it would be over \$600,000.
20 MR. FINZ: I have nothing further.
21 MR. HOWARD: Some redirect, your Honor.
22 THE COURT: Yes.
23 REDIRECT EXAMINATION
24 BY MR. HOWARD:
25 Q. Dr. Viscusi -- Professor Viscusi, you are a

1 MR. FINZ: Well, I'm sorry, Judge.
2 I didn't know if he agreed he was criticized or he
3 sugar-coated it.
4 MR. QUIGLEY: Objection.
5 MR. HOWARD: Objection.
6 THE COURT: Sustained.
7 What was the word you used?
8 THE WITNESS: Disagreed.
9 Q. Just a disagreement?
10 THE COURT: All right.
11 Q. Well, let me ask you this, if this is a
12 disagreement with that Harvard Law Review article:
13 "Considering the source of Viscusi's data and the
14 range of opinions available to the industry in gathering that
15 evidence, it should not be surprising that the surveys on
16 which Viscusi relies appear well-designed to generate the
17 appearance of overestimation of smoking risks."
18 Isn't that part of what they said in the law
19 review article at Harvard about your book?
20 A. This is what the two authors wrote.
21 Q. As a matter of fact, you were also criticized by
22 the Wall Street Journal in the year 2000, right?
23 A. You're kidding?
24 MR. QUIGLEY: You want to show it to him?
25 Q. Well --

1 doctor, though, right?
2 A. Ph.D.
3 Q. Okay. Professor Viscusi, in case it wasn't
4 clear, did we disclose that you were retained on behalf of
5 Philip Morris for your testimony today?
6 A. Yes.
7 Q. Okay. I want to turn first to the 1989 Surgeon
8 General's report which Mr. Finz asked you about and read
9 from. This is Plaintiff's Exhibit 66 in evidence.
10 A. All right.
11 Q. First of all, he had you read from page 220 or he
12 read to you from page 220 about that there was a substantial
13 number of Americans still uninformed about or do not believe
14 the health risks of smoking, and you say you disagreed; is
15 that right?
16 A. Yes.
17 Q. And why did you disagree?
18 A. Because my survey, first of all, indicated that
19 as of 1985, people overestimated the lung cancer risks of
20 smoking. As of 1991, they also overestimated the mortality
21 risk rate of smoking, the life expectancy loss of smoking,
22 and the other polls are also consistent that well widespread
23 awareness, and there are other polls here that indicate
24 awareness.
25 Q. I was just going to get to that.

1 In the body of that very report, did the Surgeon
2 General present polling information concerning the public's
3 awareness and belief about the harmfulness of smoking?

4 A. The results of the surveys are by the Adult Youth
5 Tobacco Survey and other surveys here that substantiate that.

6 Q. If you turn to page 180, let's take a look at
7 these polls from this very report Mr. Finz was reading from.

8 I'm not sure if the jury can see these numbers.

9 I can't even see these numbers.

10 First of all, can you tell us the years of the
11 surveys that are being reported by the '89 Surgeon General?

12 A. These are the adult-used tobacco surveys, 1964,
13 1966, 1970, and 1975.

14 Q. Okay. And the question asks in these polls was,
15 "Is cigarette smoking harmful to health," right?

16 A. That's right.

17 Q. Just looking, Overall Adults, what is the
18 percentage, first of all, in 1964, according to the Surgeon
19 General's report, what was the percentage of adults who
20 agreed that smoking is harmful to health?

21 A. Eighty-one percent.

22 Q. Back in '64. Okay.

23 And what about by '66? Did that increase?

24 A. It did, to 85 percent.

25 Q. And by 1970 that figure was?

1 A. Eighty-seven percent.

2 Q. And by 1975?

3 A. Ninety percent.

4 Q. And does this support your disagreement with the
5 statement that Mr. Finz read?

6 A. Yes, it does.

7 Q. Okay. Now, Mr. Finz also showed you some charts
8 from this FTC report, and I believe he asked you, first, or
9 let's take it backwards, asked about whether smoking is
10 addictive, the 1978 Roper poll. And I believe you were
11 trying to explain your disagreement with his characterization
12 because you've actually looked at the poll results. And were
13 those polls results reported in this 1989 Surgeon General
14 report?

15 A. Yes, they are.

16 Q. And I think they were reported at page 200; is
17 that correct?

18 A. That's correct.

19 Q. Would you read for the jury and explain to the
20 jury why you disagreed with Mr. Finz during his questioning
21 about that 1978 poll?

22 A. The reason I disagree is that people were asked
23 if smoking was a habit, an addiction, both a habit and
24 addiction, or neither a habit nor an addiction. So the
25 difficulty to quick responses can fall on several different

1 categories. And according to the Surgeon General, 50 percent
2 considered -- of adults considered smoking to be a habit, 29
3 percent labeled it an addiction, 17 percent said both a habit
4 and an addiction, so it's only 4 percent who say it's neither
5 a habit nor an addiction. So it's only 4 percent who don't
6 recognize the difficulty of quitting smoking.

7 Q. Okay. Now, you were also asked in connection
8 with this FTC document about chart summary on page 17 about
9 smoking causes lung cancer, and you disagreed with the
10 characterization 19 to 21 percent of the population was
11 unaware. I would like you to read the footnote on which that
12 number was based. I believe you tried to get it out during
13 the direct, but I want you to read it now for the jury.

14 MR. FINZ: Which document is this?

15 MR. HOWARD: This is your FTC document.

16 MR. FINZ: What page?

17 MR. HOWARD: Page 17.

18 Q. The footnote as to how they calculated that
19 number (handing).

20 THE COURT OFFICER: (Handing.)

21 THE WITNESS: Thank you.

22 A. "Percent unaware includes those who say they do
23 not believe true statements, believe false statements,
24 underestimate on a multiple choice question, or answered
25 don't know or uncertain."

1 Q. So is that why you disagreed with the
2 characterization of the 20 percent were unaware of because it
3 included people whom said they were uncertain?

4 A. Included the uncertain people as well as the
5 don't knows.

6 Q. By the way, could you just tell the jury, at the
7 top of that page, the percentage of the population that
8 believes cigarette smoking was harmful to health?

9 A. Well, in terms of the percent unaware?

10 Q. Right.

11 A. You have nine to ten percent who would either say
12 no, don't know or uncertain.

13 Q. So more than 90 percent said yes, cigarette
14 smoking is harmful to health?

15 A. Yes.

16 Q. Okay. I want to take a look at another document
17 that Mr. Finz showed you, which is this 1989 Roper poll. And
18 he read to you the question, "The Trouble With Cigarettes Is
19 That They," and you said you disagreed with his
20 interpretation. Why was that?

21 A. This is an open-ended question. The people give
22 lots of different reasons why they have trouble with
23 cigarettes. A lot of people -- the most common answer was
24 that it's addictive or hard to quit. He picked out, you know,
25 just the fraction of people who mentioned, specifically,

1 cancer, but there are a lots of negative things that people
2 said about cigarettes that you want to take into
3 consideration when figuring out what the public's attitudes
4 towards cigarettes are.

5 Q. In fact, the number one answer was -- that the
6 Roper poll said was that cigarettes would be hard to quit.
7 right?

8 A. That was the most common response. And once,
9 again, nobody was asked explicitly if cigarettes were hard to
10 quit. That was something they volunteered.

11 Q. Okay. During your cross-examination this morning
12 before the lunch break, you were asked about the Frank
13 Statement. I want to pull that up, it's Plaintiff's Exhibit
14 1 in evidence, and point out a couple of paragraphs that the
15 jury has not seen in the Frank Statement yet in this case.

16 The very first two paragraphs of the Frank
17 Statement. The first sentence, "Recent reports on
18 experiments with mice have given wide publicity to a theory
19 that cigarette smoking is, in some way, linked with lung
20 cancer in human beings."

21 First of all, based on what you've seen in the
22 surveys, do you agree that there was wide publicity between
23 the link of smoking and lung cancer in 1954?

24 MR. FINZ: Object to the term linked. This
25 says theory.

1 MR. HOWARD: To the theory of a link.

2 THE COURT: In some way linked one theory,
3 yes.

4 Q. Do you disagree with that, that there was wide
5 publicity?

6 A. No.

7 Q. Now, if someone had heard, by chance, that
8 publicity and read this newspaper ad published by the Tobacco
9 Industry, would you agree they've heard of it now?

10 A. The first thing they read when they read the
11 article.

12 Q. That was the very first line, wasn't it?

13 A. That's correct.

14 Q. And let's see what the second paragraph of this
15 ad was.

16 "Although conducted by doctors of professional
17 standing, these experiments are not regarded as conclusive in
18 the field of cancer research."

19 Let's stop right there.

20 From what you've seen, statements on See It Now,
21 which was in evidence, we have talked about it, was that an
22 accurate statement in 1954 that among the scientific
23 community, these experiments showing the link to cancer were
24 not conclusive?

25 MR. FINZ: I'm going to object. I don't

1 know that he's qualified to give that answer.

2 THE COURT: I don't either.

3 Sustained.

4 Q. Let's move on.

5 "However, we do not believe that any serious
6 medical research, even though its results are inconclusive,
7 should be disregarded or lightly dismissed."

8 What is the industry telling the readers of this
9 ad with that sentence?

10 THE COURT: Sustained.

11 Q. What would be -- would this have an impact on
12 people who are polled that very month by Gallup in 1954 if
13 they read this on their awareness of the link between
14 cigarette smoking and cancer and their belief of that link?

15 MR. FINZ: Objection.

16 THE COURT: Rhetorical question. I'll allow
17 it.

18 A. The poll, in essence, speaks for itself in terms
19 of the awareness. And people were aware.

20 Q. And this contributes to that?

21 A. Yes.

22 MR. HOWARD: Okay. Thank you. You could
23 take that down.

24 Q. Professor Viscusi, we looked this morning at the
25 board that led into the history of warnings, and you

1 described about consumer expectations of seeing product
2 warnings on packages. We saw the polls, we talked about
3 public statements of Government officials, et cetera.

4 In light of all that evidence that you discussed
5 with the jury, let's take the period 1959, 1960, when
6 Roseanne Inzerilla allegedly began to smoke, to 1966, when
7 the warnings first appeared on the packs, what was the roll,
8 if any, for warnings on the packages in that time period?

9 THE COURT: Sustained.

10 Q. Do you have an opinion as to whether warnings of
11 information that were already publically available from other
12 sources would have had an impact on the population in the
13 period 1960 to 1966?

14 THE COURT: I'll allow it.

15 A. The evidence and the literature indicates the
16 reminder warnings do not serve a constructive roll, only
17 warnings that provide a new information. So since the
18 information was already out there, warnings would not have
19 added to this information.

20 MR. HOWARD: Thank you, Professor. No
21 further questions.

22 THE COURT: One or two?

23 MR. FINZ: Just one or two.

24 RECROSS EXAMINATION

25 BY MR. FINZ:

1 Q. Just going back to the Frank Statement for a
2 moment.
3 MR. HOWARD: You want mine up there?
4 MR. FINZ: No, I don't need it.
5 Q. The Frank Statement, Professor, when it reported
6 that there were findings coming out that smoking was causing
7 cancer was then ceased by the tobacco companies by saying
8 there is no proof, right?
9 MR. HOWARD: Objection.
10 Q. Read the sentence that you read before that I
11 asked you to read earlier.
12 A. "We believe the products we make are not
13 injurious to health."
14 Q. Well, isn't that directly -- then it's saying
15 this is what some people are saying, but we don't believe
16 that. Doesn't that give the person who is smoking
17 reassurance it's okay? Isn't that what that does? Yes or
18 no?
19 A. Not in conjunction with what else they said.
20 Q. It does not?
21 A. No.
22 Q. We talked about consumer expectations. How about
23 the millions of consumers that didn't know that cigarettes
24 caused lung cancer back in the '50s and the '60s? Don't you
25 think they were entitled to have a warning? Yes or no?

1 MR. HOWARD: Objection to the form.
2 THE COURT: Sustained. Sustained.
3 Q. Don't you think it would have been good practice
4 by a corporation who was selling a product that has been
5 associated with cancer that the manufacturer of that product
6 warned the consumers that the manufacturer was selling that
7 product to of the potential harm and danger of using that
8 product? Wouldn't that be good, responsible behavior by a
9 corporation? Yes or no?
10 A. I don't believe in this case --
11 Q. Yes or no?
12 A. No, warnings were not needed.
13 MR. FINZ: I've got nothing further.
14 THE COURT: Thank you most kindly,
15 Professor. I appreciate your time.
16 THE WITNESS: Thank you, your Honor.